United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

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76-1283

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1283

UNITED STATES OF AMERICA,
Appellant,

—against—

SECURITY NATIONAL BANK,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

Volume IV—A. 2191 to 2904

DAVID G. TRAGER,
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UNITED STATES COURT OF APPEALS
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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BY MR. COHN:

Q Now, Mr. Dowd, when you referred in this letter or this memorandum to counsel again reviewing the matter, what were you referring to?

A That was the Shea firm.

Q And had they previously reviewed this matter of political contributions?

A Yes sir.

Q When?

A Back in 1967 before we got it off the ground. Back in -- when we wanted to change it to the Long Island Public Affairs Club, back when they called us to ask us to switch it to an individual check system.

Q And Mr. Dowd, this letter is dated August 21, 1972. That was just before you submitted a letter of resignation; is that correct?

A Yes sir.

Q I show you this document, sir, and I ask you if you can identify it --

MR. COHN: Let me mark it -- I'm sorry. I'm all mixed up.

THE CLERK: One-page document marked for identification as Defendant's Exhibit UUU.

(So marked.)

Q Mr. Dowd, please look at Defense Exhibit UUU and please tell the Court and jury what it is.

A This is a letter dated August 31, 1972, my letter of resignation from Security National Bank.

MR. COHN: May I offer this in evidence there being no objection?

THE COURT: Now in evidence.

THE CLERK: Defendant's Exhibit UUU received in evidence.

(So marked.)

Q Mr. Dowd, when you sent this letter of resignation in you had firmed up your deal with the Nassau Trust Company?

A Yes.

Q You knew where you were going?

A Yes.

MR.COHN: May I read this to the jury?

THE COURT; Yes.

MR. COHN: It is a letter dated August 31, 1972 addressed to the Board of Directors, Security National Bank from David J. Dowd, Senior Vice President and reads as follows:

Gentlemen, It is with deep regret that I tender my resignation as Senior Vice President of

A 2193

Security National Bank.

I have appreciated serving for the past six and a half years as a member of the senior management of this bank and participating in what was one of the most records in the accomplishments of banking -- I'm sorry -- I read that wrong.

I have appreciated serving for the past six and a half years as a member of the senior management of this bank and participating in what is recognized as one of the most outstanding records of accomplishment in banking.

While I believe there is much I could still do for our bank, I believe my efforts can be used even more importantly elsewhere.

Accordingly, with your acceptance of this resignation as of October 1, 1972, I will be joining the Nassau Trust Company as President, Chief Administrator and Director.

Again, it is a pleasure to have served with you and I wish you and Security National Bank the best of success in the future.

Sincerely, David J. Dowd, Senior Vice President.

Q Mr. Dowd, this letter was accepted by the

board of directors, was it not, sir?

A Yes.

Q And when was it that you actually physically left the Security National Bank?

A September 22.

Q Of 197 --

A 1972.

Q Thereafter, did you ever return to the bank?

A No sir.

Q Mr. Dowd --

MR. COHN: I'm sorry, your Honor.

May I -- this is another document. May I have it marked for identification, your Honor.

THE CLERK: Two-page document marked for identification as Defense Exhibit V, V, V.

(So marked.)

Q Mr. Dowd, I show you a two-page document marked Defendant's Exhibit VVV and I ask you, sir, whether or not you have ever seen that document before?

A Yes sir.

Q Tell theCourt and jury how it came about that you saw that document?

A Apparently, in response to my memo to Mr. Stefan, Mr. Stefan said he was going to refer it to the

counsel for review of the political contributions program and instead he reviewed it with Bert Driscoll, the in-house counsel who was on the payroll of the Shea firm but not Mr. DeGennaro or Mr. Shea directly.

Mr. Stefan obtained a memo back from Mr. Driscoll of which he gave me a copy and this looks as if this is a copy of that memo.

MR. COHN: If your Honor please, I just noticed that I had made some underlinings on his copy.

May I substitute a clean second page so that there will be none of my own work.

I will just pull these apart and ask the Clerk to staple these.

(Clerk complies.)

MR. COHN: If your Honor please, I offer this document in evidence.

(Document shown to counsel.)

(Pause.)

MR. PATTISON: May I just inquire, your Honor?

THE COURT: Yes.

(Continued next page.)

VOIR DIRE EXAMINATION

BY MR. PATTISON:

Q Sir, when did you see this document first?

A A Probably a few days after September 5, 1972.

Q Was it routed to you, sir?

A A copy was given to me.

Q Well, wasn't it part of the bank's format and custom and practice to have a routing note on the back of it, carbon copy so and so and so and so?

A I didn't prepare that, sir. That was Mr. Stefan.

If I prepared it, I would have put a routing on it but I received a copy of that memo.

In fact, Mr. Stefan came in and discussed it with me.

Q And he also talked about, did he not, this memo in connection with the memo you had sent to him prior?

A Yes sir.

MR. PATTISON: Okay, your Honor. We will not object.

THE COURT: Mark it.

MR. BANNIGAN: No objection.

THE CLERK: Defense Exhibit VVV received in evidence.

(So marked.)

MR. COHN: May I hand the document up to you? I have in mind a prior admonition you made and it occurs to me you might want to make the same admonition with respect to this document. Otherwise, if you have no objection I would read it to the jury, your Honor.

(Document handed to Court.)

(Pause.)

THE COURT: Well, this is the one that has the statement of the statute.

MR. COHN: Yes. It is not the same document that your Honor previously discussed with counsel.

THE COURT: I will permit you to read -

MR. COHN: The last paragraph?

THE COURT: Just the last paragraph because the rest is the Court charging the jury with respect to the statute --

MR. PATTISON: May we just look at the last paragraph?

THE COURT: Yes.

(Document handed to Government counsel.)

THE COURT: I didn't read it. Is it conclusory?

A 2198

MR. KATZBERG: Yes, it is conclusory.

MR. BANNIGAN: I'd like to approach the sidebar with respect to this document at this point.

THE COURT: Yes.

We can take a recess at this point. You are entitled to it.

(Jury excused.)

(The following occurred in the absence of the jury.)

MR. PATTISON: The Government's point is, of course, that the last sentence or two read without the first paragraph wherein it clearly, explicitly states that a bank cannot make political contributions in any way, shape or form, I think would mislead and it would change the total meaning of that memo as it was written and as to what it says.

MR. KATZBERG: I think maybe we can solve the problem by, in the short run, admitting the document into evidence and your Honor reserving whether the document should be read at this time or a future time to the jury and as matters develop on cross-examination --

THE COURT: I don't see any reason for holding it in abeyance.

MR. COHN: The last paragraph is what I would like to read.

THE COURT: The last paragraph though is a reflection of his opinion in describing the sections of law we are talking about.

That to me is again -- although a lawyer has a right to advise his client, this is kind of a narrow field at this point as far as I am concerned. I don't know at this time that the mere fact that a lawyer suggests to his client what the statutes are and whether the potential under those statutes is proper for a jury to decide which may conflict with the Court's charge.

The Court's charge, of necessity, will, I suppose in all circumstances, not encompass exactly what he says in the last paragraph.

I may say something similar to it and you will get the same effect but I doubt very much --

MR. COHN: Your Honor --

MR. PATTISON: I would --

MR. COHN: Please, Tom -- then I'll yield.

I don't propose to quarrel with your Honor but let me bring out what we have in mind.

We are setting up here as a defense reliance on

advice of counsel.

I am not contending here that counsel necessarily advised him what the law says, what your Honor will say to the jury in the charge and I submit, your Honor, if the lawyer gave them advice and they followed it, this is something that the jury should know regardless of whether the lawyer's advice conforms to your charge or not.

THE COURT: I do not disagree with your statement except as to this: The lawyer has the right to advise a client and the client has a right to accept that advice. You have a right to tell that to the jury in summation or otherwise.

The problem is, whether or not what the lawyer said to the client is proper under the circumstances though it was relied upon.

Now, that is a question of fact --

MR. COHN: I have no objection to your Honor instructing the jury now that what is stated in the letter is not necessarily the law. But I want the jury to know that's what the lawyers thought was the law and they relied on it and now they are standing trial under a criminal indictment because of what they were told, good, bad or indifferent.

THE COURT: Well, I don't think you need that. You can explain that they were advised and that they relied upon the advice.

MR. COHN: There is a conflict of testimony between the lawyers and what David Dowd says.

THE COURT: That is a question of credibility.

MR. COHN: We want to show, by the letter of the lawyers themselves, they give advice to the client which is consistent with what David Dowd said he got from the lawyers years before --

MR. KATZBERG: Can you keep your voice down?

MR. COHN: I apologize.

For that reason I think these defendants are entitled to show this jury what the lawyers wrote and what they said they were advised.

(Continued next page.)

hb 1 A 2202

(The following continued to be heard in the absence of the jury):

THE COURT: If it is being offered to show credibility of statements of the lawyers, that's one thing.

If it is to show that there was reliance on what was said, to show the credibility of the reliance as the witness and not the lawyers, then it may well be read. I think that will be proper.

MR. COHN: I accept that.

THE COURT: You see, we still have the matter of th defense of the reasonableness of the attorney's advice.

MR. PATTISON: First of all, there is one important missing link here.

We do not know what the lawyer was asked, the lawyer who wrote this memo. There is an important missing link here.

Obviously, he wrote this memo in answer to --

THE COURT: Some question --

MR. PATTISON: Right -- some question. We do not know what the question was.

MR. BANNIGAN: You ought to know. Mr. Stephan is in your camp.

MR. PATTISON: Please, Mr. Bannigan.

THE COURT: The jury has a right to draw an inference not only from the statement made but whatever presumptive evidence may have been proffered.

MR. PATTISON: If that is to be read I would ask -- the Government would want the entire thing read but to leave out the part about the sentence, penalties. I think that clearly should be out.

MR. COHN: I do not object to that.

THE COURT: Then if the Government doesn't object -- I may be able to do it this way -- take out the penalty and I will say that this is in the law but the jury is not to accept it at this time as to what the Court will interpret for them regarding instructions. We can do that.

MR. KATZBERG: How can one argue two weeks before one leaves the bank that he relied on the letter as to what he did for the previous three years?

THE COURT: Except that it's a flowing situation -- if I can use that--a flowing situation from '67 to '72.

MR. KATZBERG: Butit is the 11th hour and 59th minute.

THE COURT: It's like a statute of limitations. You bring it in half an hour before the statute runs out and you have a good case.

3 A 2204

MR. KATZBERG: That's the first point.

As to confusing the jury as to the state of the law by reading this, I think your Honor's previous apprehension about reading it is well taken.

Let's reserve on it at this time to see what will develop which will more fair'' --

MR. BANNIGAN: I have something I wanted to say and I have not said it yet.

THE COURT: I know 610 but not specifically.

If this is 610 and the 590 definition, I could give a limited instruction to the jury at this time that these will be the sections given to them by the Court to weigh with the facts in the case and apply them to the facts in the case in order to make a determination.

MR. PATTISON: If that is done --

THE COURT: Yes?

MR. PATTISON: (Continuing) -- I feel that the Court would also have to charge further and more fully on this part of the law because just to say that and to say that this is part of the law --

THE COURT: I will charge further and advise the jury that the statute itself would be broken down into essentials to be decided by them in order to come to a conclusion.

In other words, one, two, three, four, five, but I cannot do that right now.

I have a feeling it should go before them because I have a feeling that I may be restricting the defense --

MR. COHN: I read right up to this point, your Honor.

THE COURT: That's what bothers me.

MR. PATTISON: The problem the way I see it, is this --

THE COURT: Yes --

MR. PATTISON: (Continuing) -- if this is read now, number one, Mr. Driscoll, if called as a witness, would say he was never told about raises being part of the plan.

Therefore, to allow a memo from him --

THE COURT: I have another thought but go ahead.

MR. PATTISON: Given that offer of proof as it were, to allow a hearsay memo to go in without any way of knowing and without the jury knowing what he was asked, why he was asked --

THE COURT: May I just comment right now about your hearsay.

As to a federal statute, regardless who writes it or who may have passed it on to whom, hearsay is

A 2206

never involved because the Court is mandated by the rules to take judicial notice.

Therefore, hearsay isn't part of it.

I can attack it in two ways -- I shouldn't say "attack," because that makes me an adversary -- propound it in two ways. First of all, take judicial notice of the statute set forth in the first page of this letter in evidence. Then I can say, having taken judicial notice of that I would let this last paragraph be read.

MR. KATZBERG: The last paragraph is hearsay.

THE COURT: It's an opinion of an attorney as to whether or not it was received and accepted by the client. Otherwise, there is no need for lawyers.

MR. KATZBERG: The fact that a lawyer makes a hearsay declaration doesn't mean it doesn't fall under the hearsay rule.

MR. PATTISON: I think if the last paragraph is read, which is the savings clause which solely refers to one exception to the bulk of the law, I think that to read that without reading the first paragraph would mislead.

THE COURT: Then we will read the whole thing and I will give a limiting instruction, just as I take judicial notice of this first page.

If you want me to read the statute, I will read it and then he may read the last paragraph. But I cannot see a limitation at this point, I cannot see the limitation because of this defense. Ordinarily, it wouldn't come in.

MR. BANNIGAN: Your Honor, I asked to be heard. That is why the jury went out and I have not said anything.

THE COURT: Go ahead.

MR. BANNIGAN: You have not ruled on this but on an earlier occasion you ruled and I think there was exception taken, I believe there was --

THE COURT: It was different circumstances.

MR. BANNIGAN: Mr. Dowd testified he was sent a copy of this statute. You asked, did you read it. He said, yes.

There is a question here of reliance on counsel and wilful intent.

I say that document should be given to the jury and that doesn't usurp your power and failure to submit it is error.

THE COURT: It can't be error because they will eventually get the statute.

MR. BANNIGAN: If you read the entire statute --

THE COURT: The Court may determine what parts

2208 of the statute must be put before the jury and whether he read it or not at any time, presumptively, under the law, everyone is presumed to know each and every statute of the law. I know it is not true, but we must live with it. Presumptively, he knew each and every statute under the law.

MR. BANNIGAN: Presumptively.

THE COURT: I will take my recess at this point.

(Recess taken.)

G:m
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(After recess.)

(The following occurred in the absence of the jury.)

THE COURT: The Court's decision is as follows: I will permit thisto be read but I will give a limiting instruction without the penalty clause.

MR. COHN: Would your Honor mark it out, please, so I don't inadvertently read it?

THE COURT: Yes.

Likewise, I will give a limiting instruction that though thisis being read it is not an instruction on the law; the Court will give the law as it believes it to be and the jury should weigh the law only as the Court instructs them, and this is being offered as a piece of evidence only as to the defendant's reliance on attorney's advice.

MR. COHN: Could you tell them at the most that this is what the lawyers told the defendants?

THE COURT: No. I will just tell them what I said.

Anything else about penalties in there?

MR. COHN: I don't think so, your Honor. I will not read this part.

THE COURT: Bring in the jury.

A 2210

MR. KATZBERG: Your Honor, will you read it?

THE COURT: He can read it. It's a letter in evidence.

I will give the limiting instruction without any particular emphasis.

MR. COHN: Oh, yes, your Honor.

(The jury entered the jury box.)

D A V I D J. D O W D, resumed.

THE COURT: I am going to permit the attorney to read that last paper placed in evidence but I am giving you at this time a limiting instruction.

You will get the instructions on the law much more fully at the end of the case.

This piece of paper will pertain to the statute involved in this case.

You are not to accept the statement as to the statute involved in this case as the law in this case, since the only one who can instruct you and charge you on the law is myself, the Court.

The only weight to be given to this piece of paper, if any, is the defendant in this case relying on the opinion of the attorney or advice of the attorney and it is limited to that and that only.

It is to be considered with all other evidence in the case on both sides.

MR. COHN: Thank you, your Honor.

Let the record show that I am now reading to the jury defense Exhibit VVV in evidence.

On the top it says Joseph Stefan, [illegible], Executive Vice President, September 5, 1972, and under that B. E.Driscoll, Legal Department, and under that, Political Contributions.

It says, Section 610, Title 18, U.S. Code refers to contributions and expenditures by national banks, corporations, or labor unions.

It further states, I am limiting this memorandum to the pertinent parts of the section which refers to national banks only.

According to the section in question, it is unlawful for any national bank to make a contribution or expenditure in connection with any election to any political office or in connection with any primary election, political convention or caucus held to select candidates for any political office.

Under Section 591 of Title 18 U.S. Code, "contribution" means a gift, subscription, loan,

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advance or deposit of money or anything of value except the loan of money in accordance with applicable banking lawsand in the ordinary course of business made for the purpose of influencing the nominations or election or election of any person.

"Expenditure" means a purchase payment, distribution, loan, advance, deposit, gift of money or anything of value made for the influencing of nominations of elections or election of any person except the loan of money in accordance with banking laws.

As used in Section 610 the phrase "contribution" or "expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, gift of money or any services or anything of value by a party to any candidate, campaign committee, political party or organization in connection with any election, but shall not include the establishment, administration and solicitation of contributions to a separate, segregated fund to be utilized for political purposes by officers and employees of a corporation provided it shall be unlawful for such a fund to make a contribution or an expenditure by utilizing money or anything

of value secured by physical force, job discrimination, financial reprisals or dues, fees, as a condition of employment.

Then, on the second page -- may I now show the second page to the jury.

September 5, 1972:

Thus, under certain conditions a separate fund established by officers of a bank to which they make voluntary contributions could be drawn upon for political purposes or contributed to defray any expenses for a candidate to office.

Signed, Bertram E. Driscoll.

DIRECT EXAMINATION

BY MR. COHN (Cont'd):

Q Mr. Dowd, let me take you to a new subject.

Do you recall the Langdon meeting?

A Yes.

Q Tell the Court and jury in your own words what happened at that meeting as you recall?

A Mr. Clifford me into the meeting and I believe he and Mr. Langdon and Mr. Powell were there and Mr. Clifford had received a letter or had -- Mr. Langdon brought a letter with him which he gave to Mr. Clifford relating to certain allegations.

Mr. Clifford gave me the letter to look at which I looked at quickly and gave it to Mr. Powell and then he proceeded to discuss the contents of the letter with Mr. Langdon and I don't believe that myself and Mr. Powell made any comments during the discussion other than Mr. Clifford asked usto confirm that certain of the facts that he -- certain of the statements that he had made were so, which I did.

Q Did you at any time --

MR. COHN: Withdrawn.

Q Did Mr. Langdon ever ask you any questions?

A No, sir.

Q Did you at any time ever volunteer any information?

A Yes, sir.

I had brought -- Mr. Clifford told me it related to the matter of political contributions, so I had obtained the set of records we had at the time, which included a list of all of the officers contributing under this fund, all of their contributions they had made year to date and a list of all the payments made out of that fund for the year to date.

Q Did you give that list to Mr. Langdon?

A Yes, I gave him the entire list.

Q Did that list contain all of the officers making the contributions?

A Yes, the officers, the amounts they had contributed by month, the payments that were made out of the fund by employees, and the date I believe of the payments.

Q And at the time that you gave this list to Mr. Langdon, did you know what his position was?

A Yes, sir.

Q Did you know that Mr. Langdon was a government official?

A Yes.

Q And did you know that as such Mr. Langdon had the right to speak to all of the officers on your list?

A That's why I gave him the list.

Q Did you know he had the right to speak to Mr. Shea?

A Yes.

Q Not only as counsel for the bank but also as director?

A Yes.

Q Did you also know that at that time, Mr. Langdon, as a government official had the right to inspect every record in the bank?

A I knew his duties. He was examiner at Security National Bank for several years and I knew him previously as head examiner of Franklin National Bank audit, and I full well knew his duties.

Q Mr. Dowd, do you recall a time when you met with Mr. Shea concerning a $2,000 loan?

A Yes, sir.

Q Will you please look at Defendant's Exhibit C in evidence.

(Document handed to witness.)

Q I ask you, sir, do you recognize that document?

A Yes, sir.

Q Can you tellus when it was that you and Mr. Shea met with respect to that $2,000 loan?

A October 15, 1969.

Q And where did that meeting take place?

A Right outside my office in Huntington.

Q Tell the Court and jury in your own words how it came about that you spoke to Mr. Shea and how this loan came about.

A I was informed we had committed ourselves to make a $2,000 contribution to the Beame for Comptroller -- Beame for Reelection to the office of Comptroller of the City of New York and we were supposed to have gotten in the

check for $2,000 but we didn't have the funds available to us at that particular time.

I went into Mr. Clifford and said, "Unfortunately we just don't have the money."

He said, "Mr. Shea would like usto get this thing in promptly. He'll be in later today. Ask him if he will help us."

Q Then what happened -- before you answer that, when you say, "We had to get a check in," do you mean a check that was to come to you or go out?

A We had, apparently, to make a contribution to Mr. Beame's reelection committee and had to pay them $2,000. I believe it was probably for tickets to an affair.

Q Now, what happened after you had this conversation with Mr. Shea -- I'm sorry -- with Mr. Clifford?

A Mr. Shea came by later in the morning, I believe, and I explained we didn't have the $2,000 to make the contribution but if he could lend it to us for a short term, a short time, we'd be able to get the check out immediately.

Q What did Mr. Shea say to you?

A He said he knew the check had to be in and he said, "How do you want me to make out the check," and I said, "Make it payable to Betty Jager."

He pulled the book out of his pocket -- or loose checks out of his pocket, and he made out the check to Betty Jager Special for $2,000 and gave it to me.

Q Was there any conversation between Mr. Shea and yourself at that time concerning the subject of whether the $2,000 was for a political contribution?

A That's what I said it was for. I told him. He kn[illegible] we had to get the check. We were late.

(Continued on next page.)

Q And was the $2000 then returned to Mr. Shea?

A Yes, I told him we would get the money in a few weeks from the officers on their regular contributions and I believe we did.

MR. COHN: May I now show Defendant's Exhibit C to the jury?

THE COURT: Yes.

MR. COHN: Ladies and gentlemen, this is a photocopy of a check dated October 15, 1969 paid to the order of Betty Jaeger Special, $2,000, $2,000, signed William A. Shea and drawn on the Security National Bank of Huntington, and there is an endorsement on the back of that check. We have a photocopy of that and it says "For Deposit Betty Jaeger Special."

Now, ladies and gentlemen, may I also show you on the same day Exhibit LLL, a check from the Betty Jaeger account that was produced, Betty Jaeger Special Account, No. 341, dated October 15, 1969, same date, paid to the order of Treasurer A. Beame Campaign Committee, $2000, $2000, and it is signed Betty Jaeger. On the back let me read to you the endorsement. It says paid to the order of the Independent Committee for Abraham V. Beame for controller, Arthur Levitt, Jr. Treasurer.

The third document, let me show you, dated October 28, 1969, approximately two weeks later, Betty Jaeger Special Account, check number 351, paid to the order of William A. Shea, $2,000, $2000, signed Betty Jaeger and the endorsement on the back of the check for deposit William A. Shea and the account number.

If your Honor pleases, I have a photocopy of an exhibit. I understand the original is not available and the Government has consented that I may show the witness a copy.

Q Mr. Dowd, let me show you this document and do you recognize that check, sir?

A Yes.

Q What is that check?

A It is a check for $15,000, dated May 8, 1970, drawn by William A. Shea, payable to the Betty Jaeger Special Account.

Q Tell the Court and jury what you know about this check in your own words,

A I received a call from Mr. Dutra telling me he had been making very heavy commitments for the purchase of tickets to policital organizations. This was in the spring of 1970. He said that he was afraid we were going to be short of money. I said I would see what could be done. He told me

according to his records that we had some $15,000 worth of contributions that we were committed to and we had no money in the account. I went into Mr. Clifford's office and I told him we would be short money and he said to call Mr. Shea and see whether he will help you out. He had helped you out before. I called Mr. Shea and I explained to him that we had substantial --

Q Let me interrupt you.

You spoke to him on the telephone?

A Yes.

Q Where did you call him?

A From my office to his office.

Q Where was he at that time?

A My office was in Huntington, his office was in New York.

Q Did you recognize the voice as being the voice of William Shea when you spoke to him?

A No.

Q Tell the Court and jury what the telephone conversation was between yourself and Mr. Shea at that time.

A I told Mr. Shea that we had made a number of commitments to attend events in the last -- during the next few months and that we would be short some $15,000, if we were going to buy these tickets. He expressed surprise. He

said that that's an awful lot of money. He said why do you need that and I explained that we had committed ourselves to buy a table at the Suffolk County Republican affair, the Nassau County Republic affair, the New York State Republican function. We were committed to purchase tickets -- not tickets -- to purchase memberships in the Governors Club and when I went down the list of them he asked me why were they important. I had at my hand the deposit figures for each of the relationships and I explained why it seemed to be good for the bank and he said no question about it, they seemed to be worthwhile. He said, "How do you want me to make the check out?"

I said,"if you make it out to Betty L. Jaeger Special, I would appreciate it."

He said, "How are you going to replay me?"

I said, "I have got to be honest with you. I know we are going to have a lot more commitments beyond this, because normally in the fall there is a lot of requests to attend these functions, and reviewing this with Mr. Dutra I couldn't see how we could repay you this year. I'm afraid it would probably be in '71 and thereafter that we'd be able to start repaying you."

I said, as I mentioned before, "Mr. Shea, we really need a better method of handling this matter of buying tickets. If you'd review it again with Mr. DeGenaro and if

you could come up with a more satisfactory manner, I would appreciate it."

He said, "Dave, don't bother talking any further on that. I have gone over this with George and the way you are doing it is the only way you can properly purchase these tickets."

I said, "WEll in that case we won't be able to do anything about repaying you until we added more members to the club at the end of theyear."

I said, "We either have to increase -- add more members at the $1700 or we'd have to increase the $1700 for the existing members to $2000 or $3000 or $4000, so we'd have enough money to start paying you back and to enable us to meet our commitments for the next year."

I also said to him -- I said, "Being on the Board of Directors you have the opportunity to look at the increases that we will be giving at the end of the year and if you do not think we are giving the officers enough increases to enable them to contribute to the club, I am sure you could speak to Mr. Clifford and we can add more officers, if you are concerned."

I said, "We will pay you back, but I'm afraid it will take quite a while."

Q What did Mr. Shea say to that?

A He said that he wasn't concerned. He was sure we'd repay him.

Q Did that check then come in to the bank from Mr. Shea after you had this conversation?

A I believe it came in a few days later.

Q And was this the proceeds of this check of $15,000 then deposited in the Betty Jaeger Special Account?

A Yes.

Q And was that the account that was then in existence in May of 1970 for thepurpose of paying for those political events and dinners that you have told us about?

A I don't know whether at that time we hadn't opened the Long Island Public Affairs Club. Miss Jaeger was keeping the records for both.

Q But in any event -- withdrawn.

Can you tell the Court and jury whether $15,000 was used for the payment of political functions as part of this political contributions system regardless of whether it went out of the Betty Jaeger Fund or the Long Island Public Affairs fund?

A Solely for political contributions.

Q In your conversation with Mr. SHea, did you tell him thepurpose of getting the $15,000 from him was for the purpose of enabling these political contributions to be

made?

A Yes, and I reviewed with him the names of the organizations that we had made the commitments to and the value of the relationship to the bank.

MR. COHN: At this time may I show this check to the jury?

THE COURT: You may.

MR. COHN: Ladies and gentlemen, you will note this is check number 161, printed William A. Shea, 330 Madison Avenue, New York, New York and it is dated May 8, 1970, paid to the order of Betty L. Jaeger Special, $15,000, $15,000, signed by William Shea, drawn on the Security National Bank account and again, ladies and gentlemen, I respectfully show you the endorsement for deposit Betty L. Jaeger Special Account.

Q Mr. Dowd, did there come a time when Mr. Shea was reimbursed for his loan of $15,000?

A Yes, but I'm afraid it was quite a while.

Q Approximately how long did it take before Mr. Shea was repaid?

A I think it was close to two years.

Q Now Mr. Dowd, did you know at that time that after you had the conversation with Mr. Shea that Mr. Shea called Mr. Clifford?

A No, I didn't.

Q When for the first time did you find out that Mr. Shea had called Mr. Clifford to check up on whether what you had said was correct?

A Only here when Mr. Clifford mentioned it.

Q Did you hear Mr. Shea also testify that he called Mr. Clifford?

A Yes, you are right.

Q Did Mr. Shea ever tell you that he had checked you out with Mr. Clifford at that time?

A No, sir.

Q Did Mr. Clifford ever tell you that Mr. Shea had called him?

A No, sir.

Q Now, let me move on:

Mr. Dowd, do you recall a time when you were at work at the Nassau Trust Company when Mr. Casey came into your office at the end of a telephone conversation that you had with Mr. Clifford?

A Yes.

Q At that time you were the president of the Nassau Trust Company?

A Yes.

Q Can you fix the time of this incident?

A Yes, it was in October of 1973.

Q What is it that fixes that date in your mind?

A There were two things:

Number one, there was an article that appeared in Newsday regarding the Security National Bank making loans to political parties and the same time I knew it was before an election --

Q Let me interrupt you:

Was that the article that appeared on October 22, 1973?

A Yes.

At the same time I knew Mr. Casey was engaged in an election campaign and he was concerned about this particular article.

Q And how did it come that Mr. Casey came into your office?

A I read the article in the Newsday and I believe a day or two after I called Mr. Clifford out at Security to remind him that I had obtained an opinion from the controller of currency to make loans to political parties several years ago and if that opinion hadn't been lost or destroyed, that the bank would not have any problem.

I did not believe in this matter of its authority to make these political loans --

Q Let me interrupt you --

Mr. Casey just walked into your office when you had this conversation?

A I think at the tail end of it.

Q Was Mr. Casey at that time considered to be your friend?

A Yes.

Q And a confident?

A Yes.

Q And he had the right to barge into your office anytime he pleased?

A Yes.

Q There was an informal relationship between you?

A Yes.

Q What did you tell Mr. Casey after he walked into your office at the end of that conversation?

A I mentioned to Mr. Casey that I had just spoken to Mr. Clifford and I advised him, if he could find that written opinion, that he wouldn't have any problem on his political loan matter.

Q Was there anything said in that conversation with Mr. Casey concerning the forthcoming election?

A He was concerned about it. He thought apparently that I was talking to Mr. Clifford about something that

related to him, because he asked me did the matter refer to him and I said, "No, it didn't."

Q Now, Mr. Dowd, during the period of time that you were at the bank, the Security National Bank, did you from time to time see profitability studies that were made by the bank to show what the profits were that were generated from these municipal deposits and earned by the bank?

A Yes.

Q And can you tell me, sir, based upon your recollection of those profitability studies, what is your best estimate as to the total amount of profits that the Security National Bank earned from 1966 to 1972 from these municipal deposits?

A I'd estimate it would be in excess of seven million dollars.

(Continued on next page)

Q Did you get any part of that ten million dollars?

A No, sir.

Q Who shared in that ten million dollars?

A The shareholders.

Q Including Mr. Shea?

A Yes.

Q And you had 180 shares of stock; is that correct?

A Yes.

Q Mr. Shea had 99,000 shares of stock; is that right, sir?

A Yes.

Q Mr. Dowd, you have been indicted by a grand jury of the United States for the Eastern District of New York for having conspired with Mr. Clifford and Mr. Powell for the purpose of having caused to be made an illegal -- to have caused to be made a contribution and expenditure by the bank in violation of Title 18 United States Code Section 610, to the Committee to Elect Bernard Meyer. Are you aware of that, sir?

A Yes.

Q Tell the Court and jury what you know about this Bernard Meyer contribution.

A I knew nothing of the Bernard Meyer contribution until the indictment was forthcoming.

Q Did you know prior to the time of this indictment that $500 had been contributed to the Bernard Meyer campaign about September 9, 1972?

A No, sir.

Q Did you ever know about the situation that Mr. Clifford and Mr. Casey testified to, to the effect that $500 was given to Mr. Casey to take into New York and contribute to the Bernard Meyer campaign?

A No, sir.

Q This is on September 9, 1972?

A No, sir.

Q On September 9, 1972 had you already submitted your letter of resignation to the Security National Bank?

A Yes, and in effect Iwas no longer active in the management of the bank.

Q Mr. Dowd, you have been indicted by the same grand jury that in or about August or September of 1972 that you conspired with Patrick J. Clifford and Frank B. Powell in knowingly and willingly consenting to and causing the distribution of a contribution to be made in violation of Section 610 to the Committee for the Election of Sol Wachtler.

As you sat in this courtroom, did you learn that a check for $2,500 went to the campaign --

MR. PATTISON: Objection.

MR. COHN: May I have the check?

THE COURT: The form is bad.

MR. COHN: The best way is to see the check.

THE COURT: I think you can save time.

Q Mr. Dowd, did it come to your attention that on October 20, 1972a check of $2,500 was issued by the Security National Bank?

A Not until I heard it here during this trial.

Q On October 20, 1972 were you in the bank?

A No, sir.

Q You had already resigned?

A Yes.

Q Where were you working then?

A At the Nassau Trust Company.

MR. COHN: May I have the papers with respect to the Wachtler dinner, please?

(Documents handed to counsel.)

Q Mr. Dowd, I show you Government's Exhibit 102 in evidence and Government's Exhibit 115 in evidence, which consists of a number of pages relating to a dinner for Mr. Wachtler. Will you look through each of those pages carefully and tell me if you recognize any of them.

(Document shown to witness.)

A The first sheet relates to the Suffolk County

Republican Committee --

Q Do you recognize them?

A Yes --

Q I am sorry, does this relate to the Wachteler dinner, the first sheet?

A No, sir.

Q Take a look at the next page, does that relate to the Wachteler dinner?

A Yes.

Q Do you recognize the page?

A I recognize the form.

Q Did you ever see this paper in its completed form?

A No.

Q You never saw it before?

A No, sir.

Q Let us take the third page, did you ever see that paper before?

A No, sir.

Q Let us take the fourth page, the little pink slip, did you ever see that paper before?

A No, sir.

Q Take a look at the fifth page, did you ever see that paper before?

A No, sir.

Q So is it fair to say with regard to Exhibit 115, none of the papers here that relate to the Sol Wachteler campaign you have ever seen befcre you got in this chair today?

A Correct.

Q Let us take the next exhibit, Government's Exhibit 102:

Will you please look at the first page. Do you recognize that page, sir?

A Yes.

Q What do you recognize that first page to be?

A That is a routing slip from Mr. Johnson, the President, to myself, suggesting certain attendees to the Wachteler dinner.

Q Is the handwriting in Mr. Johnson's handwriting or is it your handwriting?

A No, sir, it would be Mr. Johnson's or his secretary. I received the original.

Q Do you remember this page and you received it?

A Yes.

Q The next is the invitation. Did you ever see that before?

A Yes, Mr. Johnson sent that to me and asked me who did I suggest should go to this dinner.

Q Let us take the last page. Do you recognize that

page, sir?

A Yes, sir.

Q Do you recognize the handwriting on the page -- withdrawn.

Is any of the handwr[illegible]ing on that page yours?

A I know nothing about the handwriting.

Q Tell us what you know about the last page.

A Mr. Johnson came to me and told me that he had committed himself -- the bank to a $2,500 contribution to the Wachteler dinner. He said he had gone to a cocktail party with Mr. Margiotta and he committed the bank and that was all there was to it. He asked me to suggest who would be possible attendees for that dinner. I gave him a memo which is what this last page is, suggesting possible personnel from the bank that could attend. He took some of the names that I suggested and left others off. I had already given my resignation and I was leaving within a week or so, so I don't think he really took it seriously.

MR. COHN: May I please show this to the jury?

Again, if you can see it from where you are.

This page you recognize?

THE WITNESS: Yes.

MR. COHN: It is a routing slip from the Security National Bank dated August 30th and it says, "Tuesday,

9/19" which I assume that means Sep- er 19, is that correct?

THE WITNESS: Yes.

Q You walked out of the bank on September 22nd?

A Yes.

Q And it has various initials, is that correct, and some names?

A Yes.

Q And these were proposed as attendees?

A They were the final attendees that Mr. Johnson asked me to forward to Mr. Chadwick.

Q These were the final attendees.

Did you comply with Mr. Johnson's instructions and forward them to Mr. Chadwick?

A Yes.

Q And this is the invitation to the affair which, Mr. Dowd, you undoubtedly saw?

A Yes.

Q And this typewritten piece of paper, this is to Rex Johnson, President, from David W. Dowd, Senior Vice President, subject, Nassau Republican Committee in honor of Honorable Sol Wachteler, September 9, 1972, suggested attendees for above function and you listed thirteen names; is that correct?

A Yes.

Q And some of these Mr. Johnson accepted and some of them he did not?

A Yes, sir.

Q Those that he accepted he put on this list?

A Yes.

Q With regard to any of the rest of the handwriting on that paper, any of it yours?

A No, sir, that looks like Mr. Chadwick's worksheet.

Q Beyond your involvement in submitting this list of proposed invitees to the dinner and beyond your forwarding this routing slip to Mr. Chadwick, did you have any other involvement in the Wachteler dinner?

A None at all.

Q Were you consulted by Mr. Johnson before he committed himself to Mr. Margiotta?

A He committed himself before he consulted anyone.

Q Mr. Margiotta is a Nassau County Republican Committee Chairman; is that correct?

A Yes.

Q Mr. Dowd, did you ever originate the Bernard Meyer contribution?

A No, sir.

Q Did you ever originate the Sol Wachteler

contribution?

A No, sir.

Q Now, Mr. Dowd, during all the time that you were involved in the political contribution system from 1967 through 1972 and during all the time that all of these monies were collected and received from the officers that culminated in this chart that the FBI agents prepared and showed to the jury, did a penny of that money find its way into your pocket?

A No, sir.

Q Did you ever personally profit from that fund?

A No, sir.

Q Did any politician who received a contribution ever give you or grant you any benefit?

A No, sir.

Q Did you get your job at the Nassau Trust Company through the efforts of any politician?

MR. PATTISON: We object on the grounds of relevancy.

THE COURT: It is not relevant.

MR. COHN: If I could get this in, I think it is relevant as far as the defendant is concerned.

MR. KATZBERG: It is totally irrelevant.

THE COURT: That is not the issue in this case.

MR. COHN: I withdraw the question.

THE COURT: I do not think you would want to try it whether anybody received any benefit from any politician.

MR. COHN: I accept that.

Q Did you at any time, when you were at the Security National Bank involved in the political contributions system as you testified to before to this jury, ever intend or actually influence any election?

A Never.

(continued next page)

DIRECT EXAMINATION

BY MR. COHN (Cont):

Q At any of the time -- withdrawn -- did you ever, while you were at Security National Bank approve any political contribution in this political contribution system with the purpose and intent of influencing anybody's election?

A No, sir.

MR. PATTISON: Objection.

THE COURT: He has already answered that.

Q Did you ever, while at Security National Bank, ever campaign for any politician?

A No, sir.

Q Have you ever been a politician, sir?

A No.

THE COURT: I really don't know what that means. For the record, I really don't know what that means.

MR. COHN: Well, we have had some here.

Q Have you ever been a candidate for office, sir?

A No, sir.

Q Meaning political office.

A No.

THE COURT: That's different.

Q During all the time you were at Security National Bank were you ever interested in or concerned with the

political success of any candidate for political office?

A No.

MR. KATZBERG: Objection.

THE COURT: That has been asked and answered.

Q Now Mr. Dowd, under the indictment with which you are charged there are twenty-two counts --

MR. KATZBERG: Objection.

MR. COHN: I want to refer to them by number. I don't want the jury to get confused. I want to go through the four counts of the indictment relating to Mr. Dowd.

THE COURT: You may ask specific questions --

MR. BANNIGAN: May we approach the side bar? I believe I am thinking what Mr. Katzberg is thinking.

(Side bar discussion between the Court and counsel as follows:)

MR. KATZBERG: Mr. Cohn named twenty-two counts and he knows, based on the defense's own motion to consolidate --

MR. COHN: It's never been approved.

MR. KATZBERG: What nonsense.

MR. BANNIGAN: It's thirteen.

THE COURT: Everybody consented to it the other day.

MR. PATTISON: Dismissal of counts was not on the

motion of the Court.

Now, when they are told 22 and they only see 11 they may quite logically --

MR. KATZBERG: It's 13.

THE COURT: You two had better get together.

I'll advise the jury that the statement is erroneous and there are thirteen counts in the indictment and he may specifically ask as to .

(Conclusion of side-bar discussion.)

(The following was held in open court.)

THE COURT: Before we go further I want to advise you there are actually thirteen counts in the indictment. The statement previously made was erroneous.

Q Mr. Dowd, you have been charged in this indictment that from in or about February, 1966 and continuously thereafter up to and including December of 1974 that you, Patrick J. Clifford and Frank Powell together with Joseph Stefan and Mr. Wulffleff combined, conspired, confederated and agreed --

MR. PATTISON: Your Honor --

THE COURT: You are reading the count and he has already entered a denial to that or he wouldn't be on trial here and he has the presumption of innocence running with him.

MR. COHN: May I ask if he committed any of the

A 2243

acts charged in the indictment?

THE COURT: You may, absolutely.

Q Did you ever conspire with these defendants or Mr. Stefan or Mr. Wulffleff for the purpose of committing any crimes while you were with Security National Bank?

A Absolutely not.

Q Did you ever knowingly, willfully or unlawfully violate Section 610 of the United States Code?

A No.

Q Did you ever knowingly, willfully or unlawfully make contributions in connection with various campaigns for elections?

A No, sir.

Q Mr. Dowd, you are charged in this indictment that in or about November, 1967 you told George Hart in substance to become a member of this political contributions group. Did you do that, sir?

A Yes.

Q For any unlawful purpose?

A No.

Q Did you have any understanding at that time when you spoke to Mr. Hart that you were requesting him to participate in an illegal or unlawful scheme?

THE COURT: No. The criteria is not his

understanding but whether what he did under the evidence propounded in the case was a violation.

MR. KATZBERG: He is going over the overt acts.

MR. COHN: May I ask if he intended to commit any crimes?

THE COURT: Yes.

Q At the time you spoke to George Hart did you ever intend to violate any laws or commit any crimes?

A Absolutely not.

Q It is charged that in December of 1968 you spoke to George Brooks about his joining this political contributions system.

A That's true.

Q When you spoke to George Brooks did you intend to commit any crimes?

A No, sir.

Q It's charged that in September of 1970 you spoke to Thomas Casey about participating in this program.

Do you deny that you spoke to Thomas Casey?

A No, sir.

Q When you spoke to Mr. Casey did you intend to commit any crimes?

A No, sir.

Q And did you intend to commit any unlawful acts?

A 2245

A No, sir.

Q And it is charged in this indictment that on September 9, 1972 you conspired with these defendants to cause an illegal contribution to be made to the Bernie Meyer fund.

Did you conspire --

MR. PATTISON: Your Honor --

THE COURT: We have been over that.

MR. COHN: I take it the same ruling as to Judge Wachteler?

THE COURT: Yes. He denies it and stands here innocent.

Q During all the time you were employed by Security National Bank and were involved in the political contributions system what was your understanding as to the legality of this system as it was exercised from time to time in the bank?

A It was perfectly valid for the bank to buy these tickets and make these contributions.

Q Did you, from this time, from 1967 until you walked out of the bank in 1972, ever understand this system was illegal?

A No, sir, and I don't today.

Q Throughout all this period of time was it your understanding that whatever was done was done in good faith

and in the best interest of the bank?

A Yes.

THE COURT: This is known as a mala prohibitum statute --

MR. COHN: I have no further questions.

THE COURT: Mr. Ryan, do you want to question now or recess? I think we will recess at this point and we will let you start fresh at two o'clock.

You may step down.

(Luncheon recess taken.)

HS/ffe
1pm/1

AFTERNOON SESSION A 2247

MR. NAFTALIS: Judge, before you bring the jury in, just one quick thing. I do not think I have any cross-examination for Mr. Dowd. I do not feel so great. Could I reserve my right to cross-examine? I doubt that I will cross-examine.

THE COURT: Yes.

(Jury present.)

D A V I D J. D O W D , having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. RYAN:

Q Mr. Dowd, I would like to ask you some questions about Frank Powell.

At the inception of the program after you had talked to Mr. DeGenaro, did you have a conversation with Frank Powell concerning the program?

A Yes.

Q And did Mr. Frank Powell and you discuss whether or not the program, as proposed, was cleared by bank counsel?

A Yes.

Q Did you tell Frank Powell it was cleared by bank's counsel?

A I believe I discussed some of the details that Mr. DeGenaro had given me.

Q Now, you said yesterday that about the end of 1968 or middle of 1968 the administration of the program went into this new business or marketing development program at the bank?

A Yes.

Q Was Frank Powell involved in the program in the middle of 1968?

A No, sir.

From the spring of 1968 on I do not believe he was involved in any capacity.

Q Now, you know that Frank Powell retired on May 1, 1972?

A Yes, sir.

Q Before Mr. Powell retired as of that date, did he have any conversation with you about his continuing in the program?

A Yes, sir.

Q Can you recall what the conversation was?

A He indicated that since he was retiring, that we couldn't count on him for any additional contributions and I said that I understood.

Q Well, in 1972 did Frank Powell have anything to

do with reviewing requests to buy tickets or anything of that kind with the program?

A By 1972 he had no involvement in the program, either in watching the fund or approving any contributions.

Q At that time Mr. Chadwick was administering the mechanics of the fund; is that correct?

A Yes, sir.

Q Now, I want to ask you about some of the substantive counts in the indictment, in which Frank Powell is named as a defendant.

Count9 charges that you, Mr. Clifford and Frank Powell knowingly and wilfully consented and caused the Security National Bank --

MR. PATTISON: We object to the form.

THE COURT: Yes.

Q It charges that you and Mr. Powell deliberately made a contribution to the Committee to Elect Bernard Meyer. You know that, don't you?

A Yes, sir.

Q Did Frank Powell to your knowledge have anything to do with that contribution?

A Nothing whatsoever.

Q The indictment says that occurred on or about September 9, 1972.

To your knowledge did Frank Powell have anything to do with that?

A No, sir, absolutely not.

Q The other count in which you and Mr. Powell are named is Count 10.

That count charges you will recall that you, Mr. Powell and Mr. Clifford caused a bank contribution to be made to the Committee to Elect Saul Wachteler .Do you recall that?

A Yes, sir.

Q And you recall Mr. Cohn showing you these documents in connection with the Wachteler solicitation for tickets and remember you wrote this note about possible attendees of the dinner?

A Yes, sir.

Q To your knowledge, did Frank Powell have anything whatsoever to do with the contributions or the purchase of tickets to the Wachteler dinner?

A He had nothing to do with it.

Q Did you ever have any agreement with Frank Powell to wilfully and deliberately misapply Security National Bank monies?

A Absolutely not.

Q Did you ever have any agreement with Frank Powell

to violate any Federal law in connection with elections?

A Positively not.

MR. RYAN: I have no further questions, your Honor.

THE COURT: Any other questions?

MR. BANNIGAN: No, your Honor.

MR. NAFTALIS: No, your Honor.

MR. COHN: Before the cross starts, I am just reminded I forgot to ask my client a question relating to one of the counts in the indictment. May I ask him that now?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. COHN: (continued)

Q Mr. Dowd, please bear with me:

I forgot to ask you a question involving the charge against you under the Bank Embezzlement Statute. Can I ask you, sir, did you ever embezzle any bank monies?

A Never.

Q Did you ever wilfully misapply any of the funds of the Security National Bank?

A Never.

Q Did you ever take monies that -- withdrawn.

Did you ever combine or conspire with anybody

to wilfully misapply any bank monies?

A No, sir.

MR. COHN: Thank you very much for permitting me to do that.

THE COURT: All right, the Government.

CROSS-EXAMINATION

BY MR. KATZBERG:

Q Good afternoon, Mr. Dowd.

Mr. Dowd, you told this jury during your direct examination by your lawyer, Mr. Cohn, that throughout this period of time from 1967 to 1972 when you were engaged in this activity, that you had no idea that there was anything wrong with what you were doing; isn't that correct?

A Yes, sir.

Q You told this jury, did you not, that during that period of time you had no reservation whatsoever about the legality of what activity you engaged with; is that correct, sir?

A Yes, sir.

Q No question about that in your mind, is there sir?

A No, sir.

Q Now, you started your testimony, did you not, by saying that you first came to the bank -- the Security

National Bank -- in February of 1966; is that correct?

A Yes, sir.

Q And you came to the bank within a couple of weeks of the time Mr. Clifford came to the bank; isn't that right?

A Yes, sir.

Q He brought you in and just as you had been at the Franklin Bank, he brought you in as his assistant; is that correct?

A Yes, sir.

Q And your title at that time was senior vice president; isn't that correct, sir?

A YEs.

Q And you were Mr. Clifford's number one assistant?

A Yes, sir.

Q You were Mr. Clifford's right hand man; isn't that correct?

A Yes.

Q And while there were a number of other officers at the bank with the title of senior vice president, you were the only one that worked directly with Mr. Clifford in that regard; isn't that correct?

A No, that wouldn't be accurate.

Q Tell us what would be accurate.

A In the lending area, in the area that Mr. Honan was concerned with, he would deal directly with Mr. Clifford.

In the operating area Mr. Powell would deal directly with Mr. Clifford.

In the area of the branches, Mr. McKay would deal directly with Mr. Clifford.

Q Perhaps you misunderstood. I will rephrase the question.

Isn't it a fact that you were the only one that was Mr. Clifford's right hand man?

A Yes, sir.

Q And so while other individuals at the bank had the title that you had, a number of other individuals had that title, you were the only one that had that day to day proximity to Mr. Clifford in all matters; isn't that correct?

A No, that would not be accurate. Mr. Powell and Mr. Maass had a closer proximity to Mr. Clifford. I was his chief assistant and I carried out the day to day functions that he requested.

Q Was Mr. Powell his chief assistant?

A No.

Q Was Mr. Honan his chief assistant?

A No, sir.

Q You were; is that correct?

A 2255

A Yes, sir.

Q Then you told us, did you not, that around September of 1967 Mr. Clifford told you to investigate a methodof making political contributions at the bank; isn't that correct, sir?

A Sir, that's not exactly what he asked, but the general tenor of it is yes.

Q Isn't it a fact -- didn't you tell us that Mr. Clifford asked you to explore other ways, other than the directors contributing, that the bank could make contributions?

A He asked me -- he said he had a problem with the Board of Directors in terms of their contributing and he asked me if I would call other bankers and ask how corporate customers had purchased tickets.

Q Towards what end?

A With the idea of determining whether there was an alternate method other than having directors.

Q To find a new method?

A Yes, sir.

Q So Mr. Clifford asked you whether or not you could explore other possibilities, other avenues of making political contributions; isn't that correct?

A All right, sir.

Q No problem with that, is there sir?

MR. BANNIGAN: Objection.

THE COURT: Do not answer that.

Q And so based upon that instruction, that request, you checked with other banks; is that correct? Isn't that what you told us, sir?

A Yes.

Q Would you tell us which banks you checked with.

A I don't recall now.

Q Can you tell us how many banks you checked with?

A I believe five or six.

Q And you cannot remember a name of a single one of those banks that you contacted?

A No, sir, I really can't.

Q Can you remember the name of any of the officers at the banks that you spoke to?

A No, sir.

Q Did you take any notes of your conversations with them?

A Yes, sir.

Q Do you have those notes?

A No, sir.

Q And so today you have no ability to tell this jury who you spoke to at any of these banks at that time to find out a new method?

A That's right, sir.

Q When you spoke to these people at those banks, did you ask them whether or not they were giving salary raises to their officers specifically to make contributions?

A No, sir.

Q Did any of those people at any of those banks tell you that they were engaged in the practice of giving officers salary increases specifically to make contributions?

A No, sir.

Q In fact all they told you, and correct me if I am wrong, that officers at the banks are already making enough money and are contributing voluntarily out of their own funds; is that correct?

A Yes, sir.

Q And there was no conversation or no discussion about giving salary raises to any officers specifically for the purpose of making political contributions; isn't that correct, sir?

A You are right, sir.

Q And so you reported to Mr. Clifford the results of your conversation with these bankers; isn't that correct, sir?

A Yes, sir.

Q And you told Mr. Clifford in essence the way that

the other banks are doing it is that the higher paid executives at the banks are contributing monies out of their own pockets essentially?

A Yes, sir.

Q Is that the system that you eventually adopted at the Security National Bank?

A Yes, sir, I believe so.

Q Didn't you give raises to the officers for the purpose?

A Yes, sir.

Q The other banks didn't tell you that they did not, did they?

A No, sir.

Q So despite what you learned what other banks were doing, you and Mr. Clifford determined to do something else; isn't that correct?

A Sir, we asked counsel to review the method under which the bank could purchase these tickets and we acted on the advice of counsel.

Q If I could get back to my question, Mr. Dowd:

Do despite what the other banks told you their practices were, you and Mr. Clifford determined to promulgate and to set in motion a different practice; isn't that correct?

A No, sir.

Q You used the same practice that the other banks used?

A No, sir.

I did not have authorityto put any system such as that into effect for the Security National Bank.

Q Isn't it a fact that you and Mr. Clifford agreed to implement the system whereby officers who contributed directly were given salary increases for that purpose? Isn't that the system that you agreed upon?

A Sir, after reviewing the matter with the attorneys, the attorneys came up with a program that they thought was proper. I brought the information to Mr. Clifford's attention, he concurred. He said, "If counsel concurred, fine."

He asked me to bring it to Mr. Maass' attention. He was the chief executive officer. Mr. Maass concurred and with his concurrence I was asked to carryout a function in connection with the implementation of that program, which I did.

(Continued on next page)

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Q The question is, Mr. Dowd, is it or is it not a fact that you and Mr. Clifford, when you discussed this matter, came up with the idea to give officers salary increases? Yes or no.

A No, sir; no, sir.

Q And you at no time agreed with Mr. Clifford that you were to implement the system at the bank where officers were given salary increases; is that what you are saying?

A I discussed with Mr. De Genaro --

Q The question involved your discussion with Mr. Clifford, Mr. Dowd

A All I did was to pass on to Mr. Clifford Mr. De Genaro's comments and Mr. Clifford said if the program we suggested conformed with the one suggested by counsel, I was to review it with Mr. Maass as chief executive officer. If he went along with it, then it was fine with Mr. Clifford.

Q Did Mr. De Genaro run the bank or did Mr. Clifford run the bank, sir?

A In any kind of official position you pay attention to the lawyers and you do not act in contravention of the lawyers.

Q The question is, did Mr. De Genaro run the

bank or did Mr. Clifford?

A Mr. Maass ran the bank. Mr. Clifford was his number one man.

Q Isn't it a fact that you and Mr. Clifford decided in 1967 to implement the system at the bank whereby officers were given $1700 salary increases; isn't that correct?

A Mr. Maass, Mr. Clifford and myself concurred in the implementation of a program recommended by counsel, yes.

Q So the answer is "yes"?

A I gave you my answer, sir.

Q The answer is "yes"?

A Yes, sir.

Q And that system was not the system you found out about at other banks; isn't that correct?

A I don't know, sir. I did not ask the other banks the details of whether they gave raises.

Q So you didn't know at that time, based upon your conversation with other banks, that other banks were doing that; isn't that correct?

A That's correct.

Q They never told you that they were doing that?

A Correct.

Q They told you the way they were doing it was having high-priced executives pay money out of their own pockets?

A Correct.

Q But that's not what you did, is it?

A That is what we did, sir.

Q Mr. Dowd, you gave salary raises.

A Mr. De Genaro said that we could do it out of our own pockets on a voluntary basis. On the other side the bank could give raises to enable the officers to make the contributions.

Q Sir, you gave salary raises, did you?

A I didn't. We did as part of the bank's program.

Q And that was never mentioned or discussed when you had those conversations with other bankers and the other banks; isn't that correct?

A That is correct, sir.

Q Are you telling us now, sir, that it was counsel's idea to give the $1700 raises?

A No, sir. That was my idea to give $1200 increases and I believe it was the consensus of the senior officers that seventeen would be a fairer amount.

Q It was your idea to give increases and not

counsel's; isn't that correct?

A I asked counsel could we give increases to enable the officers to make the contributions. He said "Yes" as long as the salary increases were the permanent property of the officers and were available to do with as they liked.

Q The question is, whose idea was the salary increases?

A I answered and I said mine, sir.

Q Thank you.

Then you told us, Mr. Dowd, that in September, perhaps October of 1967 when you did this investigation for Mr. Clifford, that you had never even heard of Title 18 United States Code Section 610; is that correct?

A Not in connection with political contributions.

Q Isn't it a fact you told this jury yesterday that you never heard of Title 18 United States Code Section 610 at all?

A That is right, sir.

I told them that I had not heard of it. In refreshing my recollection I realized that I meant in terms of political contributions, because I did obtain approval earlier for the bank to make political loans, and that opinion did encompass Section 610 as related to political loans.

Q So your testimony yesterday was incorrect; is that correct?

A Wasn't adequate.

Q Mistaken?

A It wasn't complete.

Q When you said you never heard of it, it was incomplete?

A Yes, sir.

Q Now you are telling usthat you did hear of it; is that correct?

MR. COHN: Sir, may I --

THE COURT: Yes, argumentative.

Q You heard it with respect to political loans; is that correct?

A That's correct, sir.

Q Because you knew that Section 610 of Title 18 prohibited the bank from making loans to political entities that could be construed as contributions; isn't that right?

A Yes, sir.

Q So you knew Section 610 existed and you knew that 610 related to political contributions?

A Yes, sir.

Q Isn't that correct?

A Yes, sir.

MR. KATZBERG: I ask that the clerk mark as the government's next exhibit, one-page document for identification, please.

THE CLERK: One-page document marked for identification asGovernment's Exhibit 184.

(So marked.)

(Shown to counsel.)

Q While counsel isperusing the document, to speed things up, I can ask other questions to save time.

You knew, did you not, that banks were prohibited from making political contributions at that time?

A What time is that, sir?

Q September-October, 1967.

A Yes, sir.

Q You knew that a bank couldn't take its money and give it to a political candidate or a campaign committee?

A Yes, sir.

Q Isn't that correct, sir?

A Yes, sir.

Q That the essence of the prohibition was that banks' money couldn't be used for political purposes; isn't that right, sir?

A Yes, sir.

Q When for the first time did you learn that, sir?

A When it related to political contributions in my discussions with Mr. Maass.

When it related to political loans at the time that we were requesting authority to make loans to political parties.

Q Prior to the time that you were with the Security National Bank, did you not know that banks could not make political contributions?

A I really did not.

Q You didn't know that banks couldn't make political loans prior to that time?

A No, sir.

Q The first time you found out was in 1967, is that correct --

A 1967, yes.

Q -- about the contributions?

I want to show you what has been marked as 184 for identification --

MR. COHN: I have no objection to it going into evidence.

MR. KATZBERG: I intend to offer it in a few minutes. I am asking him to identify it.

THE COURT: Can you identify it?

THE WITNESS: Yes.

Q This is a letter addressed to you from Wallace Nathan; is that correct?

A Yes.

Q And Wallace Nathan was the regional counsel of the office of the Comptroller?

A Correct.

Q Wasn't this letter written to you by the lawyer through the Comptroller's office in response to a request that you made to him?

A Yes, sir.

Q And you wanted him to give you a legal opinion; isn't that right?

A Correct, sir.

Q A legal opinion as to what the bank could or could not do when it came to a loan; isn't that correct?

A Yes, sir.

Q What the bank could or could not do when it came to a loan made to a political entity; isn't that correct?

A Correct, sir.

Q You wanted a legal opinion in writing so that you could know where you stood legally; isn't that correct?

A Yes, sir.

Q So there would be no ambiguity?

A None.

Q In response to your letter to him, is that correct, that you put your legal problem in a letter to Mr. Nathan?

A Yes.

Q And you explained everything that was relative to what you wanted to do?

MR. COHN: If your Honor pleases, if he has the letter, he should show it to the witness. It is a letter dated 1966, some ten years ago. I am talking about the letter that he said Dowd sent to the Controller of Currency.

MR. KATZBERG: I am asking if that refreshes his recollection.

MR. COHN: I think that in all fairness the witness should be shown a copy of that letter.

MR. KATZBERG: Judge, I do not have one. If I had one I would have it makred.

Q Remember the letter that you wrote to Mr. Nathan --

MR. COHN: Wait a minute, I think I may have a copy. I respectfully request that Mr. Katzberg wait a minute.

MR. KATZBERG: I have no objection.

(Pause.)

MR. KATZBERG: I ask that this letter be marked for identification.

THE CLERK: One-page document marked for identification as Government'sExhibit 185.

(So marked.)

Q Mr. Dowd, I want to show you what has been marked Government's Exhibit 185 for identification. I ask you to look at that letter and tell us whether or not that is a letter that you wrote to Mr. Nathan requesting a legal opinion.

A Yes, sir.

Q Is that correct, sir?

A Yes, sir.

Q And in response to that letter you got in return from Mr. Nathan, from the Controller's office, Exhibit 184, isn't that correct?

A That's correct.

Q Which told you what you could do and what you could not do; is that correct?

A Yes, sir.

Q Now at the time you made the request, the bank had its own lawyers, didn't they, sir?

A Yes.

Q The firm of Toaz and Buck; is that correct?

A Yes.

Q Did you consult with the firm that represented the bank at that time asto whether you could make the contributions?

A Yes, sir.

Q I am sorry, make the loan?

A Yes, sir.

Q And after consulting with the firm, you asked Mr. Nathan of the Controller's office; isn't that correct?

A My letter to Mr. Nathan said: "We understood from our conversation with our counsel, Toaz, Buck & Myers, under Rule 7740, such an advance by us would not be prohibited under the permanent federal statutes."

Q And you wanted Mr. Nathan's opinion as to whether or not that was true?

A To please confirm that to us, yes.

Q So you spoke to counsel and then to confirm counsel's opinion you asked for a written opinion from the Controller's office; isn't that correct?

A Yes, sir.

MR. KATZBERG: At this time, the Government would offer 184 and 185 into evidence.

MR. COHN: No objection.

MR. BANNIGAN: No objection.

MR. RYAN: No objection.

NAFTALIS: No objection.

THE CLERK: Government's Exhibits 184 and 185 received in evidence.

(Received in evidence.)

Q And so in 1966 you became familiar with the practice of making requests for opinion letters and writing to lawyers and receiving them; isn't that correct?

A Yes, sir.

Q And you knew that in order to get a written opinion from counsel, you would have to put something in writing requesting what information you needed, and that is how you got it; isn't that correct?

A That's not exactly right, sir.

You don't have to request an opinion in writing. What you request is a written opinion. Most opinions given by lawyers are verbal.

MR. COHN: Can we establish whether the letter went to a governmental agency or the lawyers for the bank?

THE COURT: Which letter are you talking about?

MR. COHN: The letter that he just referred to and marked. I do not think it is clear.

MR. KATZBERG: It went to Mr. Nathan at the office of the Controller of Currency.

THE COURT: The Controller of Currency.

MR. COHN: Thank you, your Honor.

Q Mr. Dowd, you told us yesterday, I believe, that there came a time in approximately September of 1967 when Mr. Clifford told you that the directors' fund was going to stop; isn't that correct?

A Yes, sir.

Q Can you tell us to the best of your recollection when the directors' fund ended?

A I actually can't, sir.

Q Didn't it end before the Betty Jager fund began?

A The directors' fund was maintained by the chairman and I was not privy to that.

Q So the answer is you do not know?

A If you could bring the records to me, I am sure that I could refresh my memory.

Q Let us do that.

I showyou Exhibits 169 and 168. Isn't it a fact that the directors' fund continued throughout October, November and December of 1968?

(Documents show to witness.)

A It looks like it carried through to January 3rd of 1968.

A 2272

Q Isn't it further a fact that the Betty Jager fund was opened in October of 1967?

A I don't recall, sir. I was not privy to the date of the opening of the account.

Q Let us see if I can refresh your recollection.

(Document shown to witness.)

A Yes, it says October 20, 1967, Betty Jager Special Account.

Q So the directors' did not stop before the Betty Jager fund was opened, did it, sir?

A Yes, that's what the records appear to indicate.

Q And that the Betty Jager fund in fact existed for a number of months while the directors were still making their contributions?

A That could be, sir.

Q Don't those records indicate that?

A That is what it seems to indicate, sir.

Q Now, Mr. Dowd, you told us in your first conversation with Mr. De Genaro, Mr. De Genaro told you that the bank cannot make political contributions; isn't that correct?

A That's correct, sir.

Q And in fact you already told us that you already knew that by then?

A Yes, sir.

Q And again, you understood that that meant that bank money could not be utilized, could not be used to make contributions; isn't that right?

MR. COHN: Objection to what counsel says he understood. Let him ask him that.

MR. PATTISON: This is cross-examination.

MR. COHN: Then I object to the form of the question.

THE COURT: Rephrase it.

Q You knew that that meant that bank money could not be used to make contributions?

A Yes, sir.

MR. COHN: The same form and I object.

THE COURT: He has answered.

Q During this first conversation with Mr. De Genaro, isn't it a fact that you said there must be some way we can do this? Isn't that right, sir?

A I said I think that it is a matter of being able to buy tickets to events, not to make political contributions, and that since other banks -- through experience -- had officers attending these functions, there must be a

proper way to attend these functions.

Q In this first meeting he said it could not be done?

A No, sir, he said "Dave, I have only been asked to look into political contributions. Let me think about the matter. I haven't gone into it yet and I will get back to you."

Q Mr Dowd, isn't it a fact that in your first conversation with Mr. De Genaro, Mr. De Genaro told you that what you proposed to do in terms of political contributions was illegal and you couldn't do it?

A No, sir.

(Continued on next page.)

Q Isn't it further a fact, Mr. Dowd, that you told Mr. Clifford what Mr. De Genaro said that it could not be done and Mr. Clifford said, I'll have to check with Mr. Shea. We'll look into it further.

A I know that I passed on Mr. DeGenaro's remarks to Mr. Clifford and he could very well have made the comment that he would speak to Mr. Shea.

I think what he told me was, in fact, he said, well, he said, Mr. Shea told me to have you wait a few days, wait until next week and he would probably call me back or I should call him.

Q Isn't it a fact that after you spoke to Mr. Clifford you saw Mr. DeGenaro again?

A No, I never saw him --

Q You spoke to him over the phone?

A Yes, sir.

Q Isn't it a fact that at that time Mr. De Genaro told you that, well, there might be a way that it could be done?

A What he said specifically, sir, was that it wasn't a matter of buying tickets, that it was a matter of making political contributions.

He said the bank cannot make political contributions.

A 2276

Then I asked, how do people attend these affairs? He said, in the way we discussed. They simply had the officers or directors buy the tickets out of their own pocket on a voluntary basis.

Then I said, do you mean we could ask the officers to substitute for the directors?

He said, if you find the officers who would voluntarily, without coercion, buy tickets, fine.

MR. KATZBERG: Your Honor, I'm sorry but may I have the question read back?

(Record read by Reporter.)

A Did I answer it, sir?

Q Isn't it a fact that at that second meeting Mr. De Genaro said to you that there might be a way to do it -- yes or no?

A Yes, sir.

Q Isn't it a fact that after Mr. De Genaro told you that you went back to Mr. Clifford and said, Pat, what do you have over Bill Shea? George De Genaro is really changing his tune?

MR. KATZBERG: I object. He has no basis for that question.

You have to have a good-faith basis to ask a question and I don't think he has one.

A-2277

THE COURT: Rephrase it.

Q Do you recall that, sir --

MR. NAFTALIS: Your Honor, I object.

THE COURT: No.

Rephrase the question.

Q Did you have a conversation with Mr. Clifford about change in attitude of Mr. De Genaro?

A I reviewed with Mr. Clifford everything Mr. De Genaro went over with me.

Q The question is, did you discuss with Mr. Clifford the change in Mr. De Genaro's attitude?

MR. BANNIGAN: Objection.

There is no such testimony. It is Mr. Katzberg's word.

THE COURT: They are your words.

Q Do you deny that, sir?

A Yes --

MR. BANNIGAN: Your Honor, you sustained the objection. This is the second time he's done that.

THE COURT: They are your words.

Q Mr. Dowd, in the same conversation with Mr. De Genaro he told you, did he not, that dinner tickets are contributions?

A Yes.

Q That just because you were attending a dinner didn't mean you were making a contribution; isn't that correct, sir?

A That is correct.

Q Isn't it further a fact, Mr. Dowd, that he told you that banks could not make contributions?

A Yes, sir, that's right.

Q And didn't he further tell you that banks could not reimburse their officers to make the contributions?

A He was very strong on that.

Q Didn't he tell you that?

A Yes, sir.

Q Didn't he tell you that the money had to come out of the pocket, the own pocket of the officer making the contribution?

A Yes, sir.

Q Didn't he tell you that it had to be his money?

A Yes, sir.

Q And you understood that, didn't you, sir?

A Yes, sir.

Q No question in your mind about that, was there, sir?

A No, sir.

Q Tell us the difference, sir, between the bank

giving somebody a raise specifically for the purpose of making a contribution and that versus paying theperson back after they make the contribution?

A The distinction Mr. De Genaro made was if you gave a fellow a raise and it was his money he could do with it as he pleased and if you asked for a contribution, that was legal.

If you simply had the bank buy the tickets it was illegal.

Q Doesn't the money that is reimbursed to the officer become part of his permanent money after he gets it?

A Yes, sir.

MR. COHN: May I have that question read?

(Record read by Reporter.)

Q So, what is the difference?

MR. COHN: That's argumentative.

THE COURT: Yes, yes.

Q Did you ask Mr. De Genaro what the difference was?

A Mr. De Genaro seemed so positive on it as the not being a problem and I had confidence in him so I didn't question him.

Q So, the answer is, no, you did not ask him?

A Would you repeat that, sir?

Q Sure.

A 2280 So, the answer is no, you did not ask Mr. De Genaro what the difference was between giving the person the money beforehand or after the fact?

A That's right, I did not ask him.

Q And you told us, Mr. Dowd, that Mr. De Genaro told you that the raise had to be given to the officers even if they didn't want to contribute --

MR. COHN: What was that? I don't remember any such testimony.

THE COURT: I don't remember any such testimony, either.

MR. KATZBERG: I have it here.

THE COURT: Then you may read it.

MR. NAFTALIS: Page, please?

MR. KATZBERG: Page 3703.

Q "The money belonged to the officers and if the officers stopped making the contributions and did not want to start it was still his raise and we could not take it back if he decided not to contribute."

A That's not what you asked, though, sir.

THE COURT: That question was asked of you?

THE WITNESS: Yes, sir, this one was and that's correct, sir.

Q Isn't it a fact that Mr. De Genaro told you that

you had to give them the money even if they didn't want to contribute?

A No, sir. He said, if you gave them the increase and they didn't want to contribute it was their money, period, and you couldn't take it back.

Q Did you ever tell a single officer that you introduced into this club that you are getting this raise and if you want to contribute one month and don't want to contribute for the rest of the years that raise stays with you?

A No, sir, I didn't.

Q Did you ever tell a single officer that you invited into this club that he could stop contributing at any time and keep the money?

A No, sir, I didn't.

Q You never told that to anyone, did you, sir?

A No, sir.

Q As a matter of fact, sir, they only got the raise only after they did agree to contribute; isn't that correct, sir?

A Yes, sir, yes, sir.

Q And they only got the raise for the specific purpose of making the contributions; isn't that correct, sir?

A Yes, sir.

Q So, the money wasn't given to these men in such

a way that they could stop contributing and they would keep it; isn't that correct, sir?

MR. COHN: Objection. Argumentative.

MR. BANNIGAN: I want the answer.

MR. NAPTALIS: I want the answer.

THE COURT: I will allow it.

A That is incorrect.

Many of the officers could not make contributions to buy tickets at the times they were requested or because of illness and under those circumstances we specifically let the officer pass the particular request for the period of time that he was ill.

Mr. McEnerny, Mr. Maass -- that I heard testify here -- a number of officers at other times who said they were simply short, including myself --

MR. KATZBERG: Your Honor, I apologize but may we have the question read to the witness again?

(Record read by Reporter.)

A Would you read that again, please?

(Record read.)

A The money was given to them in a way so that if they wished to stop contributing they could stop it.

Q But you never told them that?

A No, sir.

BY MR. KATZBERG:

Q How were they to know they could stop if you never told them?

MR. COHN: Argumentative.

THE COURT: Yes, it is argumentative.

Q In fact the way that you told them they understood full well, didn't they, sir, that they were responsible for contributing $100 a month --

MR. BANNIGAN: Objection.

MR. COHN: Objection to form.

THE COURT: I will allow it. It's been asked and answered, in any event.

Q Isn't that correct, sir?

A Yes, sir.

Q Now, you told us that you had a conversation with Mr. Clifford and that he gave his approval --"If it is okay with counsel it is okay with me. Let's go ahead and implement the system," is that correct, sir?

A That is not complete. He said, "Review it with Mr. Maass and if he concurs then let's go ahead".

Q There came a time that you went ahead, is that correct, sir?

A Yes.

Q Did you discuss with Mr. Clifford the fact

that $1,700 raises would be given?

A Yes, I believe in my final meeting.

Q And did you tell him how the $1,700 was arrived at?

A No, sir, I don't think that I went into that. He had left the matter with Mr. Maass and I believe when I reviewed it with him finally, I simply gave him the summary of what the program was.

Q Mr. Clifford didn't ask how you got a figure of $1,700?

MR. NAFTALIS: Objection to form.

THE COURT: Go ahead.

A No, sir.

Q And you didn't tell him how you figured out the $1,700?

A We had the preliminary discussion as far as the dollars to meet the club and he felt, I believe, that the implementation -- that the final program was a matter for counsel and Mr. Maass and myself.

MR. KATZBERG: I ask that the question be read back.

(Read back)

A No, sir, he didn't ask.

Q Then you told us about a meeting between

Mr. Maass, Mr. Powell and yourself, where Mr. Maass had a list of the 60 some odd officers at the bank and you and Mr. Maass and Mr. Powell figured cut who would be the ones to be the volunteers, is that correct, sir?

A Yes, sir.

Q Now, you told us that you used certain standards in figuring out who should belong and who should not, is that correct, sir?

A Yes, sir.

Q And that some of the men were unsatisfactory, is that correct, sir?

A Some of the men -- it wouldn't have been subtle to have asked them.

Q Well, do you remember telling the jury yesterday that others were unsatisfactory?

A Yes, sir.

Q Tell the ladies and gentlemen why these men were unsatisfactory.

A We had some personnel that were going to be asked to leave the bank. There was no point in asking if they would vlounteer.

Q Any other reasons some of them were unsatisfactory?

A Not that I can recall.

Q How many men of the 60 were leaving the bank approximately?

A I have no idea.

Q Rough estimate?

A How many men were leaving the bank?

Q Yes.

A I have no idea. I didn't know all the officers. Mr. Maass knew them. I am sorry.

Q More than five?

A I really don't know, sir.

Q Well, you are saying that there was no other reason other than people leaving the bank?

A Mr. Van Sant was retiring. He was executive vice-president.

Q The question is, are you saying the only basis that people were excluded from participation is because they were retiring?

A No, sir, --

Q Well, what were the other bases on which you excluded people?

A There was the matter of those officers who wouldn't be expected to be continued in the bank -- perhaps unsatisfactory or leaving or retiring officers who were junior in the bank. There were officers who -- for

instance -- obviously Mr. Maass and Mr. Clifford -- were already contributing. There was no point asking them.

Q Well, the question is, sir, was there any other basis other than people being too junior or leaving the bank or retiring?

MR. BANNIGAN: I object to the form. He asked the question and answer and is now trying to change the form of the question.

THE COURT: I believe you should start rephrasing the questions. They are becoming cumulative on the basis on which they are asked.

BY MR. KATZBERG:

Q Now, Mr. Dowd, you selected approximately 20 of these people, is that correct, sir?

A As a groupwe did, yes, sir.

Q You, Mr. Powell and Mr. Maass, is that correct, sir?

A Yes, sir. I believe we had a list of about 20 to 25.

Q Now, did you draw up a list, sir?

A I think Mr. Maass had the list of the officers with him.

Q He had the 60 names -- I mean the 20 names?

A I think he checked the names he thought

appropriate and then asked us who we thought was appropriate to ask.

Q There came a time when you agreed upon 20 people?

A Yes.

Q Did you tell Mr. Clifford about the 20 people?

A I believe when I finally reviewed the program with him I mentioned the number of officers -- I think there were only about 17 finally; 17 officers to receive increases of $1,700. They'd contribute a hundred a month. We reviewed this with Mr. DeGenaro. He had no objection. Mr. Maass and Mr. Powell had seen it also and if he had no objection, we'd go ahead.

Q Sir, the question is, did you review the names with Mr. Clifford?

A I don't believe so.

MR. NAFTALIS: He answered that question.

MR. BANNIGAN: He answered, your Honor.

THE COURT: Go ahead.

A I don't believe so.

Q The answer is, no, you didn't?

A I don't believe so.

Q Then there came a time when you and Mr. Powell --

is that correct, sir -- spoke to the officers selected by you, Mr. Powell and Mr. Maass to get them into the club, is that correct, sir?

A Yes, sir.

(Continued on next page.)

BY MR. KATZBERG:

Q And you had told us that Mr. DeGenaro had told you that mr. Clifford and Mr. Maass shouldn't introduce these people into the club because they were in too high a position and it would cast doubt on the voluntariness of these people joining; is that correct, sir?

A Yes.

Q So you decided that you and Mr. Powell would do the asking; is that correct, sir?

A Yes, sir.

Q Isn't it a fact that every person you asked to join the club was in a subordinate position to you?

A Yes.

Q Isn't it a fact that every person Mr. Powell asked to join the club was in a subordinate position to him?

A Yes, sir.

Q Didn't it cross your mind that the same coerciveness would be involved in your asking your employees?

A That's why I asked counsel about the very same matter.

Q Isn't it a fact that it crossed your mind that by you asking people who worked for you, they would feel

they would have no choice?

MR. COHN: Objection to form. So many ifs and maybes.

A When I asked counsel and they suggested we not have Mr. Clifford and Mr. Maass ask the officers, he said, "If I ask them, there is a difference in grade anyhow." And he said, "I feel the difference being the chief executive, chief administrative officer, is too great a difference. I understand there'll always be differences."

He said, "Just keep them out of it."

He said, "Therefore just select those officers you feel would honestly join on a voluntary basis because they have the best interests of the bank at heart."

Q So you had some reservation as to the plan --

MR. NAFTALIS: Objection.

THE COURT: Definitely sustained.

Q At your third meeting with Mr. DeGenaro, isn't it a fact that he told you the money given to the officers -- didn't you tell us this -- that the money given to the officers, they should be able to spend the money as they saw fit?

A Yes, right.

Q That's not what you did, is it, sir?

A I believe we did.

Q Did you hear the testimony of the officers who testified during the course of this trial?

MR. BANNIGAN: I object.

THE COURT: Sustained.

What somebody else says is not material.

Same ruling as I made as to the defendants.

He doesn't have to adopt anyone else's testimony.

MR. KATZBERG: I'm not asking for that.

BY MR. KATZBERG:

Q Isn't it a fact that none of the officers knew where the money was going after it went to Mrs. Jaeger?

A Some of the officers did, sir.

Q Other than you, Mr. Powell, other than Mr. Clifford?

A No, sir.

If Mr. Nickerson wanted to buy tickets to a Suffolk County Republican outing and requested the tickets issue, he knew the money was coming out of the fund and some portion was his.

Q When an officer wrote his check to Betty Jaeger, he had no idea -- after he gave the check to Betty Jaeger, he didn't know where the money would end up?

MR. COHN: Objection.

THE COURT: I will allow it.

A He didn't know where is specific money went.

Q And the money was given to him for contribution?

A Yes.

Q So the money wasn't given to him to spend as he saw fit, but to give the money to Mrs. Jaeger?

A To give it to Mrs. Jaeger.

Q To give Mrs. Jaeger money and he didn't know where it was going?

MR. NAFTALIS: Objection to form.

THE COURT: I will allow it.

Q Isn't that correct?

A I believed this was a proper way of handling the problem.

MR. KATZBERG: Last question, please.

I'm afraid it hasn't been answered.

THE COURT: He wants to know -- he gave the money and didn't know where it was going?

THE WITNESS: That's right.

Q So the money wasn't given to these men to spend as they saw fit, was it?

MR. BANNIGAN: Objection.

THE COURT: I will sustain it as an inference

to be drawn by the Jury.

Q You told us at this third conversation that you asked Mr. DeGenaro for a written legal opinion; isn't that correct, sir?

A Yes.

Q And first, Mr. DeGenaro told you: Okay, no problem, I will get you one?

A Correct, sir?

Q There came a time, a few weeks passed, and you had no opinion; isn't that correct?

A That's correct.

Q And so you went back to Mr. DeGenaro?

A Yes, sir.

Q And you said to him, in essence: Where is the written opinion?

A YEs, sir.

Q What did he say to you, sir?

A He told me that he'd be reviewing it with his partners and they didn't feel a legal opinion was appropriate under these circumstances, because the statute was on the books for over 50 years. There had been no cases, no bank charged under it, and therefore, there was no case law and to give a written opinion would be to somply restate the law because they didn't know how the

law would be interpreted.

Q Isn't it a fact, sir, that you told us before that Mr. DeGenaro, in telling you that he wouldn't be giving you a legal opinion, indicated to you that it would be senseless to write a legal opinion because it wasn't necessary, because the advice was obvious?

A That was as to the matter of paying the officers any salary that you wanted.

Q And it was common sense, in essence?

A That's what he said.

Q Did you ask Mr. DeGenaro, "Well, can't you just give me something in writing so I have some guidelines to go by"?

A I toldhim I still wanted an opinion.

Q He still refused?

A He said it was out of his hands.

Q Did that make you wonder, sir, about the advice that he'd given you?

MR. COHN: Objection to form.

THE COURT: Operation of the mind. If it made him wonder.

It's not a good question.

If it makes him wonder, it is definitely a bad preface.

Q Did it cross your mind at that time, sir, that maybe something was wrong?

THE COURT: Did you hear the question?

THE WITNESS: No, sir.

MR. KATZBERG: I will rephrase it.

Q You told us you wanted a legal opinion and Mr. DeGenaro didn't want to give one in writing; is that correct, sir?

A Yes.

Q Did Mr. DeGenaro's refusal to give you an opinion in writing, did that cause you, sir, to wonder whether or not something was wrong with the advice?

A Made me question whether something was wrong with the firm.

Q Did you seek new counsel at that time?

A That wasn't my province, sir.

Q Did you ask Mr. Clifford to seek new counsel at that time?

A I spoke with Mr. Clifford and told him we had no opinion and I thought we ought to get one.

Q Was anything ever done to obtain a written opinion?

A Mr. Clifford told me a week -- about a week later that he mentioned it to Mr. Shea and got the same

story.

Q You knew you could write to the comptroller's office and get a written opinion as you did in Exhibit 184, a year before?

A There is a big difference.

Loans a bank can make are strictly regulated by the law. What you do with the money in terms of buying tickets is not under the same strict supervision as the type of loans you make.

You could write to the comptroller's department as to whether you can make this or that loan. But to my knowledge, it wasn't common practive to write as to the terms of interpretation of a statute.

Q You wrote for the interpretation of the exact same statute in October --

MR. COHN: Objection.

Read the letter to the Jury.

MR. PATTISON: May we approach the bench?

THE COURT: It's the way the questions are being asked.

(Continued on next page.)

(Side bar)

THE COURT: You are doing the same thing now they were doing and I complained. You are asking the questions in the same way. They are never going to get by. They are improper under the circumstances.

MR. KATZBERG: They are not. This man said at no time did he have any reservations about this.

THE COURT: Then ask that.

Mr. Naftalis tried to do that. I am telling you the same thing now. You are not allowed to do it and it is the wrong way to ask the question.

MR. KATZBERG: I believe you are giving the jury the wrong impression.

THE COURT: No, I am not. I am merely making rules.

MR. PATTISON: Mr. Cohn opened the door as to mental state of mind, thought processes.

THE COURT: Oh, no. We're talking about his relying on his lawyer.

MR. PATTISON: We're asking that now.

THE COURT: I don't say the questions can't be asked but the way you are doing it is absolutely improper.

MR. PATTISCN: He said he never had a

moment's doubt. How can one phrase a negative question in that sense?

A 2299

THE COURT: Sure you can.

MR. PATTISON: You can ask did this come about.

THE COURT: He should say: Did you go to Mr. DeGenaro and ask him specifically and did he give you an answer and did you request information in writing? Did you do this, did you tell him you weren't too certain of what was right or wrong?

MR. PATTISON: And did it cause a doubt?

THE COURT: I will show you reversals on such questions. They are bad.

(The following occurred in open Court.)

(Continued on next page.)

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(The following took place in open Court.)

THE COURT: Maybe we will stretch for a minute and then come out.

(Recess taken at this time.)

THE COURT: All right. Bring in the jury.

(The jury is in the jury box.)

THE COURT: Ready to start again?

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Dowd, did you write to anyone at the controller's office to obtain a legal opinion on this program?

A No, sir. That's(indicating) the only person I ever wrote to --

Q Did you ever speak to anybodyfrom the controller's office in the legal department with respect to whether or not they approved this system?

A That system?

Q The system that you just described you put into operation in late 1967.

A No, sir.

Q Now, the law firm of Toaz, Buck were counsel for the bank before the Shea firm became counsel, is that correct?

A Yes, sir.

Q You know Mr. Toaz?

A Yes, sir.

Q Mr. Toaz was not only one of the lawyers for the bank he also was on the Board?

A Yes, sir.

Q Did you ever ask Mr. Toaz whether or not he could give you a legal opinion on the subject?

A No, sir.

Q Did you ever ask anybody from Mr. Toaz firm whether or not they could give you a written opinion on the subject ?

A No, sir.

Q The bank not only had as its lawyers the Shea firm in 1968, they had other counsel, is that correct, sir?

A Not that I know of, sir.

Q In-house counsel?

A Not that I know of.

Q Mr. Driscoll?

A I don't believe he was there then, sir. I believe he joined the bank in 1969, 1970.

Q In 1967, the only firm representing the bank, whether in-house capacity or counsel for the bank, was the Shea firm?

A Yes, except I believe that the Toaz firm was

handling residential mortgages possibly.

Q The Toaz firm served as in-house counsel?

A No, sir.

Q Now, did you ever write a letter to Mr. DeGenaro requesting in writing a written legal opinion from him?

A No, sir, I never did.

Q Did you ever discuss doing that with Mr. Clifford?

A No, sir.

Q There were members of a board that were lawyers at that time, is that correct?

A Yes, sir.

Q Did you ever ask any of the lawyers on the board of directors for an opinion on this particular contributions method?

A No, sir.

Q Did you ever discuss your difficulty in obtaining a written opinion with anybody other than Mr. Clifford?

A I don't believe so, sir.

Q Did Mr. Clifford tell you that he too wanted a written legal opinion?

A Yes, sir, he said he would speak to Mr. Shea about it.

Q He told you Mr. Shea didn't want to give him one?

A He told me Mr. Shea said the same thing he said to me, you have to go by the advice of counsel. If counsel says we don't need it, I guess we have to live with it.

Q You never made any attempt to get a legal opinion elsewhere, is that correct?

A That is correct, sir.

Q Then you told us that you had a discussion with Mr. Clifford at the time you were about to introduce the officers you had selected, and when I say you, Mr. Maass and Mr. Powell?

A Yes.

Q You told us that Mr. Clifford said to you at that time that you should let him know whether these people are willing to join or not?

A I don't recall saying that, sir. If you let me look at the record --

Q Let me show you page 3720 of the record, the very top line of your testimony. Tell us if that doesn't refresh your recollection that Mr. Clifford said to you: Let me know if these people are willing to join or not?

MR. NAFTALIS: I object. He's reading one line out of an answer.

THE COURT: He may ask the question.

A Yes, sir, that is right.

Q You would report back to Mr. Clifford the results of your asking these people to participate?

A Yes, sir.

Q Then there came a time in late 1967 and in early 1968 that you and Mr. Powell asked all people who had been selected to participate, is that correct, sir?

A Yes, sir.

Q Now, -- I ask that a one-page document be marked for identification.

THE COURT: All right.

THE CLERK: One page document marked for identification as Government Exhibit No. 186.

(So marked.)

(Pause.)

Q Mr. Dowd, I want to show you what has just been marked Government's Exhibit 186 for identification.

Can you look at the names contained on that exhibit and tell us whether or not your recognize those names?

A Yes, sir.

Q Isn't it a fact that those are the names of the people who were in the contributions club in 1967, 1968 and 1969?

A I don't know whether this is a complete list but I recognize the officers as members of the club.

Q Those were the officers that you and Mr. Powell and Mr. Maass se ected, is that correct?

A I believe we did, yes, sir.

MR. KATZBERG: I ask this be admitted into evidence at this time, your Honor.

THE COURT: All right.

MR. BANNIGAN: I would like to have a voir dire on it.

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. BANNIGAN:

Q Have you ever seen this list before?

A No.

Q Do you know where it came from?

A No.

MR. BANNIGAN: I would like a foundation where it comes from before it goes into evidence. Maybe we ought to approach the bench.

THE COURT: Surely.

(The following took place at side bar.)

MR. BANNIGAN: Maybe Mr. Katzberg can tell us where it came from.

MR. KATZBERG: These are each and every member on the list -- on that Long Island Public Affairs Club

memorandum dated March 27, 1970. The witness already indicated he recognized each and every name on here as a member of the club.

MR. BANNIGAN: That doesn't answer the question.

THE COURT: Where does it come from?

MR. KATZBERG: I compiled the list.

MR. BANNIGAN: Then I object.

THE COURT: Sustained.

MR. KATZBERG: If he can recognize it it's a fair and accurate --

THE COURT: It's a piece of paper.

MR. KATZBERG: I understand. It just shows who is in the club at the time.

THE COURT: No.

MR. BANNIGAN: After we recess for the day I have an application to make in connection with this.

THE COURT: All right.

(The following took place in open court.)

MR. NAFTALIS: The objection is sustained, your Honor?

THE COURT: Yes.

Just so you don't get the wrong impression, Mr. Katzberg --

(The following took place at side bar.)

THE COURT: I am sustaining this piece of paper going into evidence. You have a right to ask questions.

MR. BANNIGAN: I have no objection to that.

THE COURT: This is not admissible (indicating). If you ask, did John Jones belong to the club, you may ask that question.

MR. KATZBERG: Okay, Judge.

(The following took place in open Court.)

CROSS-EXAMINATION

BY MR. KATZBERG: (continuing)

Q Mr. Dowd, I want to show you Government's Exhibit 186, the list we have just been speaking about and Exhibit PPP which is already in evidence.

I ask you to compare the two lists and see if they contain the same names, sir.

(Pause.)

A Same list, same names on both lists.

Q Those are the people who contributed up to the early part of 1970, is that correct, sir?

A Yes, sir.

Q Now, the first name is George Barrie, is that correct, sir?

A Yes.

Q Who do you think introduced Mr. Barrie into the

club?

A I believe that he testified that Mr. Powell did.

Q Do you have any knowledge that Mr. Powell introduced him other than what Mr. Barrie testified to?

A No, sir.

Q Who introduced Mr. Bradley?

A I believe I did, sir.

Q Who introduced Mr. Brogan?

A I believe he testified Mr. Clifford did.

I know I spoke to him about the program.

Q Do you recall a conversation between yourself and Mr. Clifford and Mr. Brogan wherein Mr. Clifford spoke to Mr. Brogan about the club, about the contributions?

A I recall hearing Mr. Brogan's testimony but I don't recall the actual conversation. It could very well have been.

Q Do you recall that there came a time when the three way meeting broke up and you explained the nuts and bolts so to speak --

MR. NAFTALIS: I object. He said he doesn't remember and now he's asking --

THE COURT: He can test his recollection.

Q Thereafter, you and Mr. Brogan, just the two of you, had a conversation about Mr. Brogan becoming a

A. 2309

contributor?

A Hearing Mr. Brogan's testimony and not recollecting myself, all I really recall is what Mr. Brogan said when he testified.

Q You can't separate them out now?

A No, sir.

Q Mr. Brogan was a member of the club and you spoke to him about contributions?

A Yes, sir.

Q Mr. Brogan was offered the $1700 raise?

A I believe so, sir.

Q The next name is Mr. Brooks, is that correct?

A Yes.

Q Who introduced him?

A I spoke to him.

Q Mr. Clifford is the next name, he needs no introduction, is that correct?

A Yes, sir.

Q The next name is Van Ness Darling, he was an officer of the bank, is that correct?

A Yes.

Q Do you know who introduced Mr. Darling into the club?

A No, sir. I could have, I don't recall.

Q Mr. Darling was offered the $1700 contribution increase as well?

A I don't recall but I presume so.

Q Mr. Dickerson?

A I spoke to Mr.Dickerson.

Q Mr. Dowd is yourself.

A Yes.

Q Who told you about your contributions raise?

A Mr. Maass and Mr. Clifford said they had been contributing and would be willing to do it on their own. I said I would be willing to contribute $100 a month as well. I believe Mr. Powell said he would.

Q When for the first time did you learn that you would receive $1700 to compensate you for the contributions?

A When we agreed that all the officers except Mr. Clifford and Mr. Maass would receive the $1700 increase.

Q That must have been before 11/27/67 when you got the raise?

A Yes.

Q Mr. Dutra is the name on the list, is that correct?

A Yes.

Q Who introduced him into the club?

A I did.

A 2311

Q Mr. Fretz is the next name?

A Yes.

Q Who introduced him into the club?

A I don't recall, sir.

Q Mr. Garvey is the next name on the list?

A Yes, sir.

Q Mr. Garvey, was he a member of the club?

A He was, sir.

Q A contributor?

A Yes, sir, I can't recall whether all these had gotten increases. I know Mr. Dutra didn't.

The best I can recall, all of these were contributors. Who recruited them I can't recall.

Q Didn't you testify you agreed between yourself, Mr. Clifford and Mr. Maass, everybody except for Mr. Clifford and Mr. Maass would receive increases?

MR. BANNIGAN: I object. Dutra wasn't in the bank at that time.

MR. NAFTALIS: This is not a list of 1970.

MR. PATTISON: Your Honor --

THE COURT: The outburst we don't need.

MR. BANNIGAN: I object.

THE COURT: I will sustain the objection.

Dutra was not in the bank at that time.

MR. BANNIGAN: If I can approach the bench --

THE COURT: You're talking about a time prior to this man being in the bank.

(Continued on next page)

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MR. KATZBERG: My question is whether or not there was a conversation where it was agreed all participants would receive increases except for Mr. Clifford and Mr. Maass.

THE COURT: He answered that question.

Q Does that refresh your recollection that Mr. Garvey received an increase?

A These are the officers as of 1970 (indicating). You are talking about the list as of 1967.

Q To your knowledge, was it ever decided that certain category of officers other than Mr. Maass and Mr. Clifford would not get raises?

A It was agreed the purpose for giving the increase wasreally most of us weren't making that much to be in a position to make the contributions.

As we brought officers in, there was no need to give additional compensation because they were hired at higher salaries.

I don't know when that began but I know it did because of a number of subsequent members of the club did not receive increases.

Q Who did you have that conversation with?

A I don't recall. I don't think it was a special conversation as to the principal but I -- for instance, on

Dutra, I believe I asked him if he would be willing to join because the marketing finance was something he was handling directly, and because he was paid 35, I didn't believe he needed a raise.

Q You don't recall whether Mr. Garvey was compensated?

A I don't recall. If you give me the records I am sure I could probably help.

Q You have no independent recollection one way or the other, Mr. Dowd?

A That's right, sir.

Q The next name is Mr. Guthlein?

A Yes.

Q He was a contributor?

A Yes.

Q Who spoke to Mr. Guthlein?

A I don't recall.

Q How about Mr. Gidge?

A I don't recall.

Q How about Mr. Hart, Winston Hart?

A Sir, I know that I spoke to Mr. Hart. No question about it.

Q Mr. Humphrey?

A I don't know who spoke to Mr. Humphrey, sir.

Q Mr. Knoess?

A I did not speak to him.

Q Mr. Lamberton?

A I don't believe I spoke to him.

Q Mr. McCabe?

A He was one of the original senior officers that joined us.

Q Who spoke to him?

A I believe he was present at the meeting with Mr. Maass and Mr. Powell and myself.

Q Did Mr. McCabe receive $1700 salary increase?

A I believe so.

Q You don't recall speaking to him though?

A I don't recall. I don't believe so.

Q How about Mr. Melcher?

A I did not speak to him. I believe he testified here that Mr. Barry spoke to him.

Q How about Mr. Merz, was he a contributor?

A He was a contributor.

Q Was he given a $1700 raise?

A Sir, you have to give me his record to be able --

Q I am asking you if you recall?

A I have no independent recollection.

Q How about Milford, who spoke to him?

A I don't recall.

Q Mr. Powell of course is the next name?

A Part of the original group.

Q Mr. Sly?

A I do not know who spoke to him.

Q Mr. Saunders?

A I don't recall.

Q Mr. Slade?

A I don't recall who spoke to him.

Q Mr. Spitzbart?

A He was a director and long time member of the bank's board. I believe that he joined the original group. I don't recall whether he was present at the time of the conversations or not but I presume that Mr. Maass must have spoken to him.

Q Mr. Spitzbart got no raise?

A I don't know.

Q Mr. Vandermark?

A I believe I spoke to Vandermark.

Q Now, you told us that Mr. DeGennaro stressed to you that this must be completely voluntary on the part of the officers participating, is that correct?

A Yes.

Q That was one of the things in your mind when you spoke to these men, is that correct?

A Yes.

Q Now, when you spoke to Mr. Brooks, George Brooks, did you tell Mr. Brooks that he will get the raise before or after he agreed to contribute?

A After, sir.

Q Is it a fact you told Mr. Brooks that the purpose of the raise was to give him money for the contributions and for no other reason?

A Yes sir.

Q Did you tell Mr. Brooks he can stop contributing at any time and keep the money?

A No sir.

Q Isn't it a fact that you gave Mr. Brooks no choice but to participate?

A That is not so. Mr. Brooks was -- I felt he was a friend as well as a contemporary in age and status and I approached only those officers who I felt that I knew personally, that we were reasonably close in title, and I could ask without them feeling they could be threatened in terms of it being involuntary.

Q Do you need that to continue testifying (indicating)?

A 2318

A No.

Q Did it come as a surprise to you when Mr. Brooks testified he felt he had no choice?

MR. BANNIGAN: I object and I ask to approach the side bar.

THE COURT: Okay.

(The following took place at side bar.)

MR. BANNIGAN: He has repeatedly done this. He puts one witness' testimony to another witness. He continues to do it.

THE COURT: Let me hear the question.

(Whereupon the last question was read by the Reporter.)

MR. BANNIGAN: I ask for a mistrial.

MR. PATTISON: Mr. Cohn and most of the other lawyers have made it a common practice of saying "there is evidence in the record that blah blah blah," and "do you agree with that or is that what occurred or not." That is exactly the same thing.

MR. BANNIGAN: The question is, if you had objected it would have been sustained but you did not object. We objected and it has been sustained and you continue to do it.

MR. PATTISON: We did object also. The issue

in this case is intent, state of mind, mental operation, et cetera --

MR. BANNIGAN: What has that got to do with the question?

MR. KATZBERG: It's a fair question.

MR. BANNIGAN: It's got nothing to do with the question -- what difference does it mean if he was surprised or not?

MR. NAFTALIS: Your Honor --

THE COURT: Wait a minute.

MR. NAFTALIS: This question has come up a number of times, your Honor. Your Honor ruled --

MR. KATZBERG: Your Honor --

MR. NAFTALIS: Let me finish, please.

Your Honor, this has come up on Mr. Clifford's examination and Mr. Dowd's examination at least ten or twelve times. He keeps asking: Didn't you hear X testify, and each time there's an objection made and the objection is sustained.

THE COURT: He does not have to adopt the testimony.

MR. NAFTALIS: I think what got Mr. Bannigan upset, and I agree with him, is your Honor made a ruling and it's plain to everybody in the Court that

8 Dowd

A 2320 Mr. Katzberg keeps on flying in the face of your Honor's ruling by asking those kinds of questions. I think your Honor ought to instruct him to desist from doing this.

Your Honor ruled --

MR. KATZBERG: You know, as well as Mr. Naftalis, I would never intentionally go against the Court's ruling. I intentionally couched the question the way that I did to avoid objection. The point is this, there is clearly a conflict in the testimony here.

THE COURT: There is.

MR. NAFTALIS: This is an argument for summation.

MR. KATZBERG: Here is a man who was trying to give the picture of somebody who completely laid it out as voluntary and there was no coercion, and another guy says he had a totally different picture of that.

My point is I think it is perfectly appropriate and fair to ask him in words or substance whether or not that came as a surprise to him. If your Honor wants to give me an appropriate way --

THE COURT: Whether or not it was a surprise to him is not material. It's a question of the jury

weighing the credibility of one witness against the other.

The jury knows what Mr. Brooks said and also knows what he said. It makes no difference whether he is surprised or not.

You can ask -- I am not going to phrase it for you -- but you can ask: Are you telling us Mr. Brooks never told you --

MR. KATZBERG: That isn't the same thing.

THE COURT: I know. But the question of surprise, as far as I am concerned, is irrelevant. I don't know what it means.

MR. KATZBERG: It goes clearly to the question of how can a person claim he is carefully making it voluntary --

THE COURT: That's what you have to ask him.

MR. KATZBERG: All I am looking for is a way to couch the question.

THE COURT: I am inclined to agree that the word "surprise" is bad.

MR. NAFTALIS: I have a further objection. I think the reason why your Honor has been sustaining it up to this point is we are going to be involved in a transcript hunt throughout the trial as to whether

Mr. Katzberg's recollection squares with my recollection and your Honor's recollection and --

THE COURT: It doesn't make any difference what our recollection is. It's the jury's recollection that counts.

MR. NAFTALIS: We've checked the transcript and it does not exactly square with what Mr. Katzberg said.

MR. KATZBERG: I am --

MR. NAFTALIS: I am tired of your misstatements.

(Continued next page.)

mp/ss

3pm3

(Continued out of the hearing of the jury.)

THE COURT: Mr. Cohn can come back --

MR. BANNIGAN: All I object to is the reference to what somebody else testified to. That is for the jury. If I've done it in the past, I apologize. But surprise doesn't mean a thing to me.

THE COURT: It's not at all probative of anything except the weight to be given by the jury. That is what is wrong with the question. I know you want to show what the agreement was between the witnesses but you can't ask whether he is surprised by John Jones --

MR. KATZBERG: That's not what I'm asking.

THE COURT: You must say: Did he ever say, did you do that, did you do this, did he come to you and say that he really hasn't got a choice, or did you have a conversation where he implied it --

MR. BANNIGAN: I have no objection to that.

THE COURT: Then the jury has a right to weigh the testimony.

MR. KATZBERG: The inherent nature of the relationship between Brooks and Dowd is that Brooks wouldn't dare go to Dowd -

THE COURT: All right. Now you're laying a

question of confrontation. It's a question of who they believe.

MR. BANNIGAN: It's for summation, that type of argument.

THE COURT: That is going beyond what we are doing right now. His questions -- some of them he could have left out -- but his questions have been proper to this point. Everybody asks bad questions, even I do.

MR. BANNIGAN: Nobody's perfect.

THE COURT: I wish we all were perfect. And this is not the easiest case in the world where you have so many witnesses. Stay away from the surprise -

MR. PATTISON: Is it possible -- I think he should be allowed to ask did you make conscious effort to avoid the feeling of the person asked that he had no choice --

MR. BANNIGAN: Fine. I have no objection.

MR. PATTISON: Wait.

THE COURT: Yes --

MR. PATTISON: As far as you know, did you make that clear or not.

MR. BANNIGAN: I have no objection to that.

MR. PATTISON: And then have you ever had any

other trouble or have you ever had any trouble making yourself clear.

MR. BANNICAN: I would object to that.

THE COURT: The word trouble is there.

MR. PATTISON: Did there ever come a time when Mr. Brooks and yourself --

THE COURT: Express dissatisfaction --

MR. PATTISON: Had a communication breakdown, or words to that effect.

MR. BANNIGAN: Did Mr. Brooks ever come to you and say he felt it was involuntary.

MR. PATTISON: No. What I am asking your Honor is this, in any other area, in any other communication, contact, have you ever crossed wires. In other words, where you were talking about one thing -- or words to that effect.

THE COURT: You know how to phrase it.

MR. BANNIGAN: I object. If in that question Mr. Pattison is suggesting he include with that the testimony by Brooks at the trial.

MR. KATZBERG: I want to avoid another side bar, your Honor.

THE COURT: Me, too.

MR. KATZBERG: Why can't we get the language we

can all agree upon and ask --

THE COURT: I don't think you are going to agree on any language. You wouldn't agree on his and he wouldn't agree on yours.

MR. BANNIGAN: Maybe you ought to ask the question.

THE COURT: Not me.

MR. PATTISON: Can we at this time maybe work it out?

THE COURT: You can take a few minutes or --

MR. PATTISON: What time do you plan on breaking?

THE COURT: We can break 5:00, 5:30.

MR. BANNIGAN: I have a witness coming into my office --

THE COURT: We'll take a five minute break now so you can get the question in your mind.

(Continued next page.)

THE COURT: We will take a five minute recess.

(REcess taken.)

D A V I D D O W D , resumes the stand and testifies further as follows:

CROSS-EXAMINATION

BY MR. KATZBERG (Continued):

Q Mr. Dowd, isn't it a fact when you spoke to George Brooks you told him in words or in substance: "Congratulations, you are in the club"?

A No.

Q You don't recall telling him that he was already in?

A No. I'm positive that I did not talk to him in that manner.

Q I show you page 1199 of the transcript. Would that refresh your recollection that you told him that, sir?

(Document shown to witness.)

MR. BANNIGAN: I object.

A That's what Mr. Brooks said.

MR. BANNIGAN: How can it refresh his recollection, if he has testified he positively did not do that?

THEWITNESS: I am positive that I did not.

Q You made every effort you could to make

Mr. Brooks feel that he could join or not join?

A Yes, I really did.

Q Could you tell us what you said to him?

A I said, "George, as you know from running the Riverhead office, we have had in order to attend the various political events, the directors buying the tickets."

I said, "The directors have indicated that they do not want to continue this any further and Mr. Clifford and Mr. Maass have asked if we could get a group of senior officers together who would be willing to contribute $100 a month towards buying these tickets."

Q What did you tell him to make him believe that he had a choice?

A Just what I said, sir.

"George, I suggested your name as one of the officers who might be willing to help the group of senior officers make these contributions. Would you be willing to give us a hand?"

Q Did you tell him that he could say no if he wanted to?

A No, sir.

Q Did you tell him that he had a right to refuse?

A No, sir.

Q Did you tell him that nothing would happen to him in any way if he did refuse?

A No, sir.

Q Did you tell him you wouldn't hold it against him if he said no?

A Mr. Brooks was the kind of an individual if I tried to jam anything down his throat he would have told me to go to damnation.

Q Did you tell him it was his decision and nobody else's?

A His decision, yes.

Q You told him that?

A Yes, sir.

Q Strictly up to him?

A Yes, sir.

Q You also spoke to Mr. Bradley; isn't that right?

A Yes, sir.

Q Robert Bradley?

A I believe so.

Q You asked Mr. Bradley if he'd be willing to contribute?

A Yes, sir.

Q And after he said he would, you offered him

a raise; is that correct?

A Yes, sir.

Q Isn't it a fact that Mr. Bradley told you that he didn't like the club or the idea of the contributions?

A No, sir.

Q Do you deny that Mr. Barrie told you, "David, I don't like it -- I don't like it?"

A I and Mr. Clifford hired Mr. Bradley. We were also friends. If Mr. Bradley had not wanted to join the club, he was on the same status as I. He was in charge of lending. He would have told me. He would have told Mr.CLifford and he would have refused to join.

Q So he didn't say that to you, "I don't like it"?

A No sir.

Q Isn't it further a fact that Mr. Bradley told you: "If I have to, I will join," or words to that effect?

A No, sir.

He said something to the effect: "Dave, if you need help on it certainly I will be glad to help." Something to that effect.

Q You deny that he said, "If I have to I have to"?

A Sir, Mr. Bradley was one of the most senior

officers in the bank and if there was anyone in this group that didn't want to do something, that could have easily refused to do it, it was Mr. Bradley and I am telling you that he did indicate that he did not wish to join.

Q You deny that he said that: "If I have to, I have to"?

MR. COHN: I object. How many times do you want him to deny it? I think I heard it four times.

Q Did you tell him it was a confidential matter, by the way?

A No sir.

Q Did you tell that to Mr. Brooks?

A No, sir.

Q Did you tell any of the officers?

A No, sir. All salaries are confidential and the increase part of it in our normal conversations -- as a matter of practice, we are cautioned to tell the officers: "Look, this matter is something between us," and that is standard practice in companies generally.

Q Didyou follow that practice in this regard?

A I don't believe so.

Q Didn't you tell any of them that it was confidential?

A No, sir.

Q And you spoke to Mr. Vandermark; is that

correct?

A Yes, sir.

Q Did you tell Mr. Vandermark that he could choose to join or not join as he saw fit?

A Yes, sir.

Q Did you tell Mr. Vandermark that he could stop making the contributions at any time and keep the money?

A No, sir.

Q Did you tell Mr. Vandermark that his decision to participate was strictly his own and there would be no repercussions if he refused?

A I am sure I said to each of the individuals, "It is strictly up to you whether you want to join or not."

Q So it is your recollection that you told that to Mr. Vandermark as well?

A Yes, sir.

Q You also spoke to Mr. Dutra; is that correct?

A Yes, sir.

Q You told us that you spoke to Mr. Dutra in approximately the summer of 1969?

A Yes, sir.

Q You remember if it was July or August? Do you have any specific recollection?

A No, sir. I think he had been there anywhere

from four to six months.

Q So approximately July or August, somewhere in there?

A Yes, sir.

Q When you spoke to Mr. Dutra, you told us that you did not offer him a raise; is that correct?

A That's right.

Q You told us that you felt that he was making enough money already?

A Yes, sri.

Q When you told Mr. Dutra about the contributions did you tell him at that time that other officers were receiving $1700 raises?

A No, sir.

Q Was there any discussion whatsoever in your conversations with Mr. Dutra in either July or August of 1970, wherein you told him that other officers were being given money for this purpose?

A I am pretty sure that I did not tell him that.

Q Isn't it a fact, sir, that when you spoke to Mr. Dutra -- withdrawn.

I believe you told us in your direct examination yesterday thatyou were making more money than Mr. Dutra and you felt if you could afford it so could he?

A At the time we were both asked to join the plan.

Q Isn't it a fact, sir, that in July of 1969 Mr. Dutra was making $35,000?

A Yes, sir.

Q Isn't it further a fact that by July of 1969 you were making $42,000?

A Yes, but when I joined the plan I was making $27,500 and he was making $35,000.

Q Isn't it a fact that when you spoke to Mr. Dutra you were making more money than he was?

A Yes.

Q And yet you didn't offer him a raise, did you, sir?

A No, sir.

Q Didn't there come a time later on that year, toward the end of 1969, when you again had a conversation with Mr. Dutra about contributions?

A In what sense, sir?

Q Do you recall Mr. Dutra coming to you and saying, in words or in substance, "Dave, I have been finding out that everybody else is getting money for this thing. How come I am not?"

Do you recall that conversation?

A I know that he approached me around the time

that we came up with the annual increases at the end of the year and felt that since others had received increases, would he receive an increase in salary.

Q For the contributions?

A Yes, sir.

Q So there did come a time that he asked you why he did not get increases while others had?

A Yes, sir.

Q What did you say to him at that time?

A I said, "Joe, when you came in it was at a higher salary -- your salary is higher than most officers of the bank. I felt that you could financially afford it if you wanted to join this group -- do it out of your own pocket without getting an increase."

Q Did you say anything else to Mr. Dutra at that time?

A I am sure that I did. I don't know what.

Q Do you recall what Mr. Dutra said in response to what you told him?

A He seemed satisfied. He said he hoped that he would be considered at the end of the year. He had been working hard and doing a good job and expected that he would get a good increase at the end of the year.

Q Do you recall him saying to you in words or

in substance that he felt you were unfair that you were treating him differently than the others?

A No, sir.

Q No recollection of that?

A I tell you clearly, he did not put it that way. Joe was a man and he did not speak in those terms.

Q Now, in December of 1970 you also spoke to Mr. Casey about the contributions?

A Yes, sir.

Q And you called him -- he was at home -- around Christmas time?

I think Mr. Dutra had spoken to him about joining the club. I spoke to him about his increase, I believe.

Q Around Christmastime of 1970?

A Yes.

Q And he was home and you called him?

A Yes, sir.

Q You told him that he was getting a $5,000 raise, do you recall that?

A Yes, sir

Q And that $2,000 of the $5,000 was for contributions?

A I can't recall whether I said, you kno..,

"Joe had told me that you were willing to join the club and we hope that you'd be able to contribute $100 a month," or I told him that $2,000 of it was for the increase. I can't recall the exact words but the substance of it was that. I don't know if it was $1700 or $2000, but $3000 was for merit and the other $2,000 was to enable him to make the contributions to which he had agreed.

Q $3,000 for merit, $2,000 approximately for contributions, right?

A Yes, sir.

Q And he agreed to participate at that time; is that correct?

A Joe had told me before that he had agreed to participate.

Q And he told you nothing in that conversation which would have been to the contrary?

A No, sir, not at all.

Q It was the practice at the Security National Bank at that time, was it not, that an officer's salary review form would have to be written to justify a raise that an officer got?

A Yes, sir.

Q And that the officer receiving the raise, his boss would have to write up that officer's salary

review form?

A Yes, sir.

Q And that officer's salary review form was intended to justify why the man deserved what was being recommended?

A The review form was to give management -- to give to management -- the salary review committee an evaluation as to the man's performance during the year.

Q And that related to his raise?

A Absolutely.

Q The better his performance the higher the raise; is that correct?

A Yes, sir.

Q And some men whose performance was not that good got no raise or a small raise?

A Correct.

Q If someone performed well, he got compensated in a salary increase for that performance?

A Yes, sir.

Q And you, did you not, filled out such an officer's salary review form for Mr. Casey?

A Mr. Dutra and myself, I believe, we did.

Q What happens to the officer's salary review form after the officer's superior fills it out?

A It would go to the officer's salary review committee for their review.

Q Then where?

A The president and the chairman or as I understand the approval by the board.

Q So the board of directors would essentially see these forms?

A No sir, I think all they got was the -- I really had never been a member of the board. I am not familiar with that process.

Q People making the recommendation to the board would have these review forms to justify the raise?

A You are putting me in an area where I do not feel competent. Logically, yes.

(continued next page)

Q Fine. Isn't it a fact that when you wrote up this officers' salary review form for Thomas Casey, for his increase of $5,000 effective January of 1971 --

A Sir, I do not know if I prepared it. If you let me look at it --

MR. KATZBERG: I ask that this be marked as a separate exhibit, your Honor.

(Four-page document marked for identification as Government's Number 187)

(Shown to Counsel)

MR. HAFTALIS: I have no objection. I think this is in evidence already during Mr. Casey's examination.

MR. KATZBERG: It might be. May we use this copy?

THE COURT: Yes.

Q Let me show you Exhibit 187, Mr. Dowd, and will you tell us whether or not that refreshes your memory that you in fact were the one who wrote up Mr. Casey's salary review form to justify his raise?

A This was prepared by Mr. Dutra.

Q Is your signature on there?

A Yes.

Q In other words, the actual ratings were prepared by Mr. Dutra and he brought it to me and asked me to review it and asked me to complete the summary portion of it.

Q Is that your handwriting over here?

A This is mine and this is Mr. Dutra's.

Q And the first two pages where you checked boxes is Mr. Dutra's --

A And the written language.

Q And the third page --

A Is mine.

Q Is yours?

A Yes.

Q And the fourth page?

A Mine.

Q 12/29?

A Yes.

Q That would be 1970 for the raise effective 1/71?

A Correct?

Q Did you on any place on this officers' salary review form justify Mr. Casey's increase in part or in whole on the basis of giving him money to make political contributions?

A Sir, there was nothing required on the matter of the salary review to provide a distinction between that portion of the raise that was on merit and that portion that would be for contributions. The officer who received contribution raises, that portion of their salary was discussed at the officers salary committee meetings. In other words, Mr. Casey was rec-

commended for a $5,000 salary raise, but he was asked to join the club and therefore only $3,000 of this would be fore merit, and we had a separate list, and we had a way of distinguishing between the pay raises that were given for merit, and the portion for contributions.

Q The asterisk?

A I believe that was only the first time around.

Q I will get around to the asterisk at another time.

Did you write anyplace on that the fact that $2,000 of Mr. Casey's $5,000 raise was for contributions?

A No sir, it was on a separate list.

Q Do you have that list with you?

A No, sir. That is part of the bank's records.

Q Have you seen that list recently?

A I saw it each year we had a salary committee meeting. I have not seen it since.

Q So a person reading this document would think that Mr. Casey was getting $5,000 based completely on merit

MR. ANNIGAN: Objection as to what anybody might thing.

THE COURT: No.

A The only people reading this would be the officers of the salary review committee, who were fully informed, how much the raise was for contributions, and how much for merit.

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Q Or the board?

A I do not know. I doubt if it was given to the board, but I have no idea.

Q And it was the Board of Directors afterwards that was responsible for approving the recommended increases; is that correct?

A I believe that it was the management of the bank that recommended the salary increases. The only time the Board approved the salaries was at the end of the annual organization meeting, after the stockholders meeting. This was an annual meeting. The officers' salaries are set at that meeting and the officers serve at tht salary unless modified by management until it is changed the following year.

Q Are you telling the jury that the Board of Directors at the bank were not charge with the responsibility of approving all recommended salary increases of officers?

A I was never a director of the bank. I can only speak from my experience when I was a director of my own bank. At my bank, we presented the increases of officers to the Board of Directors --

Q The question is not at your bank. The question is at the Security National Bank.

A . I am not competent to answer that.

Q You do not know whether or not the Board of

Directors --

A No, sir.

Q -- played that role at the bank?

A I don't know.

Q Looking at your own chart they are the very top of the structure here; is that correct?

A Yes, sir.

Q Did you ever list on any of the other officers' salary review forms that you filled out for people who were getting raises for the contributions -- either in whole or in part -- did you ever mention on any of the other forms for any of the other officers that part of that money was going for contributions?

A No sir, it was always on a separate list.

Q Never put in writing on that review form?

A Not to my knowledge.

Q To your knowledge, did the other officers who wrote the reviews for their employees, write the fact that part of the money or all of the money was going to contributions?

A Not to my knowledge.

Q There was nothing wrong with this, was there, sir?

A No, sir.

Q Just worked out that way?

MR. COHN: Is that a question, your Honor?

THE COURT: I do not think it is a question.

MR. BANNIGAN: I move that it be stricken.

THE COURT: Strike it.

Q Did it just work out that way, sir?

MR. COHN: Didn't your Honor strike it?

MR. BANNIGAN: I think your Honor struck it.

THE COURT: That is not a question.

Q Now, Mr. Dowd, you also spoke to Mr. Gargano; is that correct?

A Yes, sir.

Q At the same time, in December 1970?

A Yes, sir.

(continued next page)

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CROSS-EXAMINATION

BY MR. KATZBERG (Continuing):

Q And you offered Mr. Gargano a salary raise; isn't that correct, sir?

A Yes.

Q For the same specific purpose -- to make political contributions; isn't that correct, sir?

A Yes, sir.

Q Part was for merit and part was for contributions?

A Yes, sir.

Q And you only offered Mr. Gargano his raise after he agreed to contribute; is that correct, sir?

A Yes.

Q Is it fair to say that you didn't tell Mr. Gargano either that he could stop contributing at any time and could keep the money he was getting?

A That's correct, sir.

Q What did you tell Mr. Gargano to make him feel that he had a free choice?

A Again, I knew Mike then for four years as a good up and coming officer of the bank.

I told him the same thing, as you know, we have a group of officers who buy the tickets for the bank. These

officers contribute a hundred dollars a month to the fund and Mike, we'd appreciate knowing whether you would be willing to join this group or not.

Q Did you tell Mr. Gargano he was free to say yes or no and nothing would happen either way?

A My relationship with Mike was such that if he didn't want to do something he would have told me in plain no uncertain words.

Q So, you didn't tell him he had a choice?

A I didn't think I had to.

I think our relationship was such that if he had any reservation he would have spoken up. I knew him well.

Q No question about that in your mind?

A No question.

Q In late 1969 you also spoke to Mr. Travers?

A That's right, sir.

Q Your situation in speaking to Mr. Travers was different in that Mr. Travers was your superior?

A Yes, sir.

Q The chart -- I don't have the number -- shows that Mr. Travers was under Mr. Clifford?

A That's right, sir.

Q And over you?

A Yes, sir.

Q Now, how did it come about that in late 1969 you asked Mr. Travers to contribute?

A No, sir.

We were buying tickets to, I believe it was the Suffolk County Republican Dinner and I went in and spoke to Mr. Travers about the group we were going to have there and would he like to come with us.

He said, yes, of course he felt he should be there.

I said, would you like to buy your ticket?

He said, why should I buy my ticket?

I said, we have an officers' fund that buys the tickets but you have not been a participant in it. Would you like to buy yours?

He said, no, Dave. I'd rather have the fund buy it for me.

I said, all right, if you think it is appropriate, and I passed it at that except that I must say that I did go into Mr. Clifford and mention that I thought it odd that the president of the bank was asking that the rest of us buy his ticket.

Q Isn't it a fact, Mr. Dowd, that you asked Mr. Travers to be a contributor?

A No, sir.

Q Isn't it a fact that Mr. Travers told you at

that time you can't tell people who to contribute to?

A No, sir.

Q Do you deny that, sir?

A Yes, sir.

Q Do you deny that you told Mr. Travers, well, I'm going to have to report your refusal to Mr. Clifford?

A No, I did not. You don't talk that way to a President of a bank. It would be the most foolish thing in my career. I certainly wouldn't.

Q There came a time, didn't there when you did report Mr. Travers' refusal to Mr. Clifford?

A Yes, sir.

Q What did you tell him?

A I told Mr. Clifford that I thought it was odd that a President of the bank didn't want to buy the tickets to these affairs and wanted the rest of us to buy these tickets.

I shouldn't have said it but I did.

Q What did Mr. Clifford say to that?

A He said, Dave, leave us alone. It's supposed to be a voluntary plan. You told us that's what the lawyer said. If he doesn't want to join, leave him alone. But, on the other hand, you have to have the President attend these affairs. Therefore, it's appropriate that the bank

buy his tickets and I agreed and we bought his tickets.

Q Isn't it a fact that Mr. Travers didn't want to play any function with respect to the contributions organization either as a contributor or a person introducing people into the club or a person deciding where the money should go?

A You're absolutely right, sir.

Q He wanted nothing whatsoever to do with it?

A That's correct, sir.

Q And isn't it a fact that indeed Mr. Travers played no role with respect to either contributing -- is that correct, sir --

A Right --

Q (Continuing) -- and he played no role with respect to where the money was to go?

A No, sir.

In that, he had a lot of suggestions as to affairs he thought he should attend.

Q I'm talking about what the club should support.

A No. It was appropriate to bring certain contributions to his knowledge -- I mean -- that he was familiar with, to his attention.

Q Mr. Travers was upstate --

A He had important connections with New York State

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and we felt --

Q But --

MR. NAFTALIS: Let him finish.

MR. PATTISON: It's not responsive.

THE COURT: It doesn't seem material to the question but go ahead.

A And I felt or rather the bank felt that he certainly would be knowledgeable in which New York State affairs we should participate in.

Q The point is that Mr. Travers did not play a role, did he, with respect to deciding where the money should go from the club?

MR. NAFTALIS. Objection. Asked and answered.

THE COURT: I will allow it.

A To the extent that they were affairs he wanted the bank to participate in, he did.

Q And the others he had nothing to do with?

A He had nothing to do with.

THE COURT: Do you think this is a good time to recess?

MR. KATZBERG: I have just a couple of more questions about Mr. Travers.

THE COURT: All right, finish this line of questioning.

Q With respect to Mr. Travers, he never asked anybody to join the club; is that correct, sir?

A That is correct, sir.

Q And he kept away from the club as best he could; isn't that correct?

A No, sir, he participated in the Officers Salary Review Meeting. The first and second I'm sure that he was there.

Every year he was there he participated. In fact, he predominated at the Officers Salary Committee Meetings where we reviewed which officers were being raises to enable them to make contributions and which portions were given for merit.

Q Mr. Travers ever propose raises for people in the club?

A No, sir.

Q Mr. Travers' participation was only going to the events?

A Yes, sir.

Q And expressing an opinion as to particular events close to him that he knew about --

MR. BANNIGAN: Objection.

THE COURT: He can answer.

A That at his attendance at the Officer Salary

Committee Meetings when he, as President of the bank, had to take the recommendations of the Salary Committee and obtain further approval.

Q That's where you used those lists, sir?

A Yes, sir.

MR. KATZBERG: I have nothing further at this time.

I have plenty more to go into but this may be a good stopping point.

THE COURT: All right.

Don't talk about the case and be here at 10 o'clock tomorrow morning.

(Jury excused.)

(The following occurred in the absence of the jury):

MR. BANNIGAN: We have a couple of motions. Would you prefer to do them in the morning?

THE COURT: Yes.

(Court adjourned to April 22, 1976.)

* * *

DAVID J. DOWD, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE CLERK: Mr. Dowd, please be advised that you are still under oath.

CROSS-EXAMINATION

BY MR. KATZBERG: (Continuing.)

Q You told us yesterday that in late 1967 you had a conversation with Mr. Clifford wherein he told you to keep him advised of the officers you asked to contribute; is that correct?

A Yes, sir.

Q Which ones joined and which ones did not?

A Yes, sir.

Q After you spoke to the various individuals that you have already enumerated, Mr. Brooks for example, Mr. Bradley for example, Mr. Vandermark for example, and the others, did you report to Mr. Clifford that they had in fact agreed to participate?

A Yes, sir.

Q What about the people that Mr. Powell introduced into the club? Did he ever tell you in substance that he had asked various people like Mr. Knoess or others and they too agreed to join?

A I believe hd did.

Q And did you report that back to Mr. Clifford?

A I don't recall.

Q Do you know whether or not Mr. Powell did?

A I don't recall. It could very well have been.

Q Now, you reported to Mr. Clifford on a daily basis at this time?

A Yes.

Q And worked in very close contact with him; is that correct?

A Yes.

Q Is it fair to say that there came a time when all the twenty some-odd people in late 1967 or early had agreed to participate that Mr. Clifford was informed who those people were or that the club had been shut up?

A I am sure he was informed about the club. I do not know that the individual member names were read to him.

Q Other than your telling him orally of the ones you introduced?

A Yes, sir.

Q Now, did there come a time when you drew up a list or had a list drawn up of the people in the club?

A Mr. Maass kept that original list and when we reported back that the officers had agreed, he simply kept the list and I gather he indicated that they were willing to

become members.

Q As you recall Mr. Maass' list originally had the sixty names of all the officers?

A Yes.

Q Did there come a time when there was a separate list made up of the people doing the contributions?

a Mr. Maass handled that part of it. I do not know if he took the officers list off that or checked those who reported back to be willing to join.

Q Isn't it a fact that such a list was given to Miss Jaeger when she was asked to compile for records of the contributions?

A It must have been, but I was not personally privvied to it.

Q Did you ever see such a list?

A I saw -- I know at some point -- I guess after I took over the responsibility from Mr. Powell that I reviewed a list. I know from time to time I saw it. I do not recall when I first saw it.

Q Now, with respect to the Betty Jaeger fund, you told us that there were two ways that requests for contributions came in?

A Yes.

Q The first way was the request would go to the

A 2357

branch manager?

A Yes.

Q And the other way was that the request would go directly to the president?

A Or the chairman.

Q Or the chairman?

A Yes.

Q In the Betty Jaeger system, the request that went to the manager would be forwarded to you by the manager or some other individual; is that correct?

A Yes, sir.

Q F[illegible]pproval as to whether or not the contribution should be made?

A I think at some point we gave guidelines to the managers and in effect authorized them for smaller amounts to approve it themselves and forward it to Miss Jaeger and if it had that approval she'd effect payment.

Q What was the smaller amounts?

A Probably under a hundred dollars originally.

Q And anything over a hundred dollars went to you?

A It would go to me during that early stage and then subsequently I asked Mr. Dutra to take that responsibility and then he gave it to Mr. Casey and Mr. Casey gave it to

Mr. Chadwick.

Q Let us start in the beginning, in 1968, it would come to you?

A In 1968 if it were a larger one -- after Mr. Powell began to phase out, it would have come to me and Mrs. Jaeger would have called me and I would have asked her what the conditions were as to the approval, and if it made sense I would have said, "Soumds all right to me."

Q But in the very beginning, in early 1968, it would be you or Mr. Powell?

A Basically Mr. Powell and myself operated under the guidelines that Mr. Maass had set up.

Q And part of the guidelines was that requests over $100 would be approved by you or Mr. Powell and that would be translated into a contribution through Ms. Jaeger?

A Yes, sir.

Q And the other people involved in the early years, 1967, 1968 and 1969 would be the president of the bank, Mr. Clifford --

A Yes.

Q -- when the requests came directly to his office; is that correct?

A Right.

Q And he would either approve it or disapprove it?

A If he thought he should, yes.

Q And that would be transmitted to whom?

A Then he would send it probably to Mrs. Jaeger.

Q Would he consult with you about his decision in terms of those contributions?

A No, he didn't obviously. He didn't have to consult with me.

Q No sir?

A No sir.

Q Mr. Dutra didn't become involved until 1969; is that correct?

A Right.

Q Approximately December of 1969?

A Yes.

Q That sounds about right?

A Yes.

Q Up until that time the only people who were involved in decision-making, in terms of where the money should go, was you, Mr. Powell, Mr. Clifford and in the beginning Mr. Maass?

A And the officers who received the requests originally.

Q I am talking about requests over a hundred dollars?

A Yes, that is right.

Q And you delegated to the managers the responsibility and the authority to approve requests under a hundred dollars?

A We also had other senior officers. For instance, Mr. McCabe. He was in charge of the branches and anything that he wanted done would be done.

Q I am talking about the routine procedures, the guidelines. Is that fair?

A It is fair.

Q Then there came a time when Mr. Dutra joined the bank and in the summer of 1969, is it fair to say, that you brought him into this contributions system?

A Yes, sir.

Q And Mr. Dutra was given the responsibility by you for deciding in some instances whether or not contributions would be approved; is that correct?

A It really wasn't his responsibility to decide to approve them. His responsibility was to see that they came in properly approved. That is for the smaller amounts.

Secondly, to review the benefits that would be gained by the bank versus the cost of attending and then, Paragraph Number 3, to see that his secretary or Mrs Jaeger actually issued the check.

Q Did Mr. Dutra have the authority to take a $1000 request, for example? Did Mr. Dutra have the authority to approve a $1000 request on his own?

A He would call me if it were $1000. He would ask me what I thought and on $1000 or more I would probably go into Mr. Maass, who had the background and experience, and ask him does this make sense.

Q Mr. Maass was no longer there when Mr. Dutra was there?

A I'm sorry. Once Mr. Maass left, if I had any doubts -- by then we had a precedent established. We had a pattern of attending events every year. If it were out of the precedent though, then I would go to Mr. Clifford or Mr. Travers if I thought they could give a better judgment on it.

Q But Mr. Dutra didn't have the responsibility to approve requests in that amount?

A That's right.

Q And then there came a time when Mr. Casey was brought into this; is that correct?

A Yes, sir.

Q And Mr. Casey was given similar responsibilities as Mr. Dutra had been; is that correct?

A Yes, sir.

Q If a smaller request came in he could approve it by himself, say for $200?

A I believe we gave him up to $500.

Q And anything larger would be passed along to you, sir?

A Yes, sir.

Q And if you had any doubts you would consult with other people, Mr. Clifford or anybody else that might be knowledgeable --

A That's right.

Q -- is that correct, sir?

A Yes, sir.

Q Now, under the same system when the requests came in -- I am talking about 1970 when Mr. Maass is gone a year or two, Mr. Dutra is present, Mr. Casey is present. -- when the requests came in to Mr. Clifford, right to his office, and let us say it was $1000 request from the Nassau County Republicans. How would that request be handled?

A It depended on the action that Mr. Clifford thought appropriate. If it were the Nassau County Republicans, he probably would have indicated, "I think we should buy ten tickets" or something along those lines.

Q Who would he consult with to determine whether or not --

A It was his own experience as to the value of the relationship. If he didn't think it was important, he would do nothing except have his secretary forward it to Mr. Casey if he was in charge at the time.

Q Were there times when you, Mr. Clifford, Mr. Casey and Mr. Dutra would discuss these contributions to determine whether or not they should be made?

A Surely.

Q You told us about guidelines before. Remember, sir?

A Yes.

Q Were those guidelines ever put into writing?

A Not to my knowledge.

Q Did anyone ever request formal guidelines that people could know what to follow?

A I don't believe so.

Q You kept those guidelines pretty much, you know, in your head and Mr. Clifford's head and then Mr. Dutra's and Mr. Casey's?

A It was the same kind of guidelines we used in attending a charitable affair. It was the benefit to the bank. Mr. Clifford had many years of experience and I had a number of years. We did it in terms of our judgment as to whether any action benefited the bank on the course.

Q Guidelines as to how much money a manager could approve on his own, Mr. Dutra could approve on his own, Mr. Casey could approve on his own, those were the guidelines?

A I think at one time we did put that into writing.

Q Do you know where that document is?

A It would be -- I presume in your records or the bank's records.

Q Have you ever seen such guidelines?

A I believe that I did, but I have not seen them so far in this case.

Q If I were to tell you --

MR. COHN: I will object to what he will tell him.

THE COURT: Do not preface it.

Q Have you seen any such guidelines produced here in Court?

A No, sir.

Q Now of course, it was a factor in making these decisions as to where the money would go and one of the important considerations, was it not, was whether this political committee or this politician -- what municipal accounts did he have, is that correct?

A Yes.

Q How much money is involved?

A Yes.

Q Who has the accounts, our bank or another bank; isn't that correct?

A Yes, sir.

Q Whether or not we can get those accounts; is that correct?

A Yes.

Q Whether or not we can keep the accounts that we already have; isn't that correct?

A Yes.

Q Now, you told us that there came a time in March of 1970 when you and Mr. Dutra discussed the formation of the Long Island Public Affairs Club; is that correct?

A Yes.

Q And Mr. Dutra proposed a change in the contributions method?

A Yes, sir.

Q And that change simply was that none of the bank personnel would be included in the contributions?

A Yes, sir.

Q And that the name would be changed from the Betty Jaeger to the Long Island Public Affairs Club?

A Yes, sir.

Q So that the Betty Jaeger account would not be used and the Long Island Public Affairs Club would instead be used; is that correct, sir?

A Yes.

Q Now, did there come a time when you, Mr. Clifford, Mr. Powell and Mr. Dutra in 1970, around this time, had a meeting --

A Yes, sir.

Q --concerning the Long Island Public Affairs Club?

A Yes, I believe we did.

Q Isn't it true that in that meeting Mr. Clifford announced that he had just spoken with Mr. Shea?

A I think that the meeting that you are referring to, sir, was in the fall of 1969. That was when I first asked Mr. Dutra to take on the responsibility for this club and after I had gotten Mr. Clifford's approval he said, "If Mr. Dutra is going to handle it, I'd like to talk to him." And that was the meeting I think with only Mr. Dutra and myself and Mr. Clifford. Mr. Clifford told Mr. Dutra, "I want you to be very careful in how you handle this program. Our lawyers, Mr. Shea in particular told us to be very concerned about reimbursement here. I do not want to see any reimbursements. This is a matter where you must confirm to the legal requirements of this program. Has Mr. Dowd briefed you on it?"

And Mr. Dutra said, "Yes."

Mr. Clifford admonished him to be very careful and keep within the spirit of the law, because I gathered that Mr. Shea had additionally discussed with him this matter of compliance, and the matter of reimbursement. Reimbursement seemed to be a big concern to Mr. Shea and his firm.

Q I am referring, Mr. Dowd, to the spring of 1970 --

A No, sir.

Q -- at the time of the Long Island Public Affairs Club formation. I am asking you, sir, did there come a time when you had a meeting with Mr. Dutra when Mr. Clifford was present and when Mr. Powell was present, wherein you discussed the formation of the Long Island Public Affairs Club?

A Yes, sir, that was at one of our regular management meetings or at the tail end of it.

Q Now, Mr. Dowd, did there come a time in that meeting when Mr. Clifford announced that he had just spoken with Mr. Shea and that the Betty Jaeger system had to be stopped

A No, sir.

Q Never happened?

A No, sir, never happened.

Q Did there come a time during the course of that meeting when someone asked Mr. Clifford, "What's wrong with the Betty Jaeger system?" Do you remember that?

A That was the meeting in the fa... of 1969, sir.

Q Isn't it a fact that Mr. Clifford said, "Well we have got two problems here. The first problem is giving salary raises to the officers and the second problem is the question of the commingling of accounts."

MR. COHN: I rise for only one purpose. You recall when I was cross-examining a witness, your Honor gave an admonition to the jury that merely because a lawyer says it, does not make it a fact. It is not to be inferred by the jury to be a fact. I would at this point, since Mr. Katzberg uses that technique, that the same admonition be given to the jury.

THE COURT: I do not think they have forgotten. The same admonition applies.

MR. KATZBERG: May I have the question read back?

(Question read.)

A No, sir, Mr. Clifford never discussed those two matters in any contacts at any meeting.

Q Is it true that Mr. Dutra then proposed that the officers who had been given salary raises have their salary raises taken away?

MR. NAFTALIS: I object. He said the conversation never happened.

THE COURT: He has a right to ask it.

A No, sir.

You are referring again to the meeting in the fall of 1969.

Q At that time Mr. Dutra proposed the salary increases be taken away?

A Mr. Dutra after that meeting felt that reimbursement related to giving salary increases and no matter what I said to him still felt reimbursement related to salary increases.

Q That is what he said?

A That is what he felt. I said for him to go over it again because it was counsel's advice that it doesn't. Mr. Dutra is not a lawyer and I felt that he should go back and review it again if he had any questions or any doubts and I believe that he gave that idea up by the time we got to the management meeting of 1970.

Q Isn't it true, sir, that you told Mr. Dutra in that regard that no one is really getting compensated for the contributions, instead people are being compensated for extra work?

A No, sir, I repeated to him whatcounsel had advised us.

Q Now, it was decided in the spring of 1970 to

form the Long Island Public Affairs Club; is that correct?

A Yes, sir.

Q You said that you would check it out with Mr. DeGenaro and that Mr. Dutra should check it out with Mr. Driscoll; is that correct?

A Yes, sir.

Q And that you would speak to Mr. DeGenaro and he could speak to Mr. Driscoll?

A I said that I would speak to Mr. DeGenaro because Mr. Clifford had said that he had no objection and the management group had no objection, but itwas subject to the concurrence of counsel. Itook that to mean it was my responsibility to speak to Mr. DeGenaro after I spoke to Mr. DeGenaro then Mr. DeGenaro advisd me to have Mr. Dutra work out the details of the club with Mr. Driscoll.

Q So you told Mr. Dutra to speak to Mr. Driscoll; is that correct?

A Yes, sir.

Q And prior to his speaking to Mr. Driscoll, Mr. Dutra showed you the memorandum which is now an exhibit in evidence as Exhibit PPP; is that correct?

A Yes.

Q And you reviewed that memorandum before it went out?

A Right.

Q Did you give Mr. Dutra any instruction as to what to tell Mr. Driscoll about the Long Island Public Affairs Club?

A No, sir, I told him to review the matter of the formation of the club per Mr. DeGenaro's instructions and if he had any questions to call Mr. DeGenaro.

Q And did you tell Mr. Dutra to discuss the salary increases with Mr. Driscoll?

A The only assignment I gave to Mr. Dutra was to review the formation of the club per Mr. DeGenaro's instructions with Mr. Driscoll.

Q Isn't it a fact that you told Mr. Dutra, "Only tell Driscoll what he has to know, only to make up a set of bylaws"?

A That is an absolute lie.

Q No question about it?

A No question about it.

Q The memorandum, PPP in evidence, was written by Mr. Dutra which you told us was in concurrence with bank's counsel; is that right?

A Yes.

Q Mr. Dutra didn't speak to bank's counsel, you did, isn't that right?

A Yes, sir.

Q So his report here about what bank's counsel said is based upon what you told him; isn't that correct?

A Yes, sir.

Q And the agreement of members of senior management, is that correct, that is you --

A Yes, sir.

Q -- Mr. Powell --

A Yes, sir.

Q -- Mr. Clifford?

A Yes, sir.

Q The memorandum goes on to say, "I would like to form the Long Island Public Affairs Club."

It was actually Mr. Dutra's idea to call it the Long Island Public Affairs Club and form that entity; is that correct?

A Yes, sir.

Q An idea that senior management approved?

A Yes, sir.

Q It says the purpose will be to enccurage participation by officers and employees of the bank in public affairs; is that correct?

A Yes, sir.

Q Did it say anything about making political

contributions?

A No, sir.

Q Did it say anything about salary raises to make political contributions?

A No, sir.

Q Does it say anything about making political contributions to acquire municipal accounts?

A No, sir.

Q It lists a number of officers and Mr. Dutra is listed as the president; correct?

A Yes.

Q Who made Mr. Dutra the president?

A I do not think anybody made him the president. It was his suggestion that if we are going to have a club, there should be officers andthe suggested names of officers were his, although it could very well have been my idea. But these are only suggestions and of course it has to be with the concurrence of the officers.

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(Continued on next page)

BY MR. KATZBERG:

Q The question is: Do you recall whether or not Mr. Dutra made himself president or you or other people designated him as president?

A I can't really recall. It would have been like Joe to suggest himself, but I would not have hesitated to recommend him.

Q And certainly he couldn't have suggested himself and become the president with you your concurrence?

A I concurred in this. I concurred 100 percent.

Q Who made Mr. Casey the vice president?

A I think that Tom was actually -- was in charge of business development. It was probably Dutra that suggested his name. I know I concurred it.

Q And Mr. Dowd, you were the secretary; is that right?

A Yes.

Q Who proposed you as secretary?

A I again believe Mr. Dutra did. I knew I had the overall involvement and I should be an officer of the club in some form.

Q And Mr. Powell was the treasurer?

A I don't think anybody asked him. This was Mr. Dutra's suggestion. I concurred in it because

Mrs. Jaeger was still handling the money.

Q And Mr. Powell supervised her?

A I don't know whether he concurred in that.

Q Look at the list of the members. How many are there on that list?

A Looks like there are twenty-seven.

Q How did you know which people would be members?

A Mr. Dutra prepared the memo. He must have gotten it from the records that he kept or Betty Jaeger kept.

Q All the members of the Long Island Public Affairs Club were former members of the Jaeger contributions system?

A The idea was to ask all the people that were contributing to the Betty Jaeger fund to be members of the club. I do not think we got around to formally adopting these as officers or formally asking -- formally asking any of the participants to join the club. By the time -- there was a protracted delay in getting the by-laws off the ground and by the time the by-laws were completed, Mr. DeGennaro had asked us to drop the club.

Q LEt us take it from the beginning:

This memorandum is in March?

A Yes, sir.

Q And the members are proposed as of March?

A Yes, sir.

Q All the members of the Long Island Public Affairs Club were Betty Jaeger members?

A That's the concept.

Q Now, the Long Island Public Affairs Club actually had a bank account?

A Yes, sir.

Q And it was opened approximately in April; is that correct sir?

A Could very well be.

Q So the account was opened in April and the account existed through May, through June, through July, through August and through September; isn't that right, sir?

A Yes, sir.

Q It wasn't until September that the account was actually closed?

A That could be.

Q From the point the account was opened by Ms. Jaeger, it would take the checks written to her and deposit them into the Long Island Public Affairs account; is that right?

A Yes, sir.

Q And the Long Island Public Affairs club account was the operating account for the contributions?

A That's right.

Q Isn't that correct?

A Yes sir, right.

Q And yet isn't it a fact that not one of the people who is now a member of the Long Island Public Affairs Club was ever told that he was a member of the Long Island Public Affairs Club?

A Sir, I think we asked them to contribute to the fund. We didn't say it had to be a fund in Betty Jaeger's name or a fund in somebody's name. I don't think Mr. Dutra felt it was necessary to distinguish what was the name of the fund that they were contributing to. Whether it was the Long Island Public Affairs Club or the Betty Jaeger fund, it was still an officers' fund.

Q Isn't it a fact that none of the people were told that they were members of the Long Island Public Affairs Club?

A To my knowledge -- I know I knew. I do not know whether Mr. Dutra told -- which of the other members he told. Mr. Casey must have known. Mr. Dutra knew. Mr. Powell must have known.

Q Other than the officers?

A I don't know.

Q You have no idea?

A No, sir.

Q Did you and Mr. Dutra feel it was important to notify these people that they were members of an organization?

MR. BANNIGAN: Objection as to what Mr. Dutra might have thought.

THE COURT: Rephrase the question.

Q And so it wasn't important enough to tell these people that they were members of a new organization?

A Mr. Dutra -- I am a little hazy on this. I know Mr. Dutra's concept was to actually have a formal club and a meeting and to have by-laws and officers and run it as a club. I think what was needed to get it off the ground was the preparation of the by-laws and to have a formal meeting adopting them. As I said, I think the club's concept got off the ground on an operating basis before the operation of the club.

Q And people contributing before they were told they were members?

A The funds were being deposited into a fund. Instead of putting it into the Betty Jaeger fund, it was being put into the Long Island Public Affairs Club fund. I saw nothing wrong with it and Mr. Dutra did not either. I did not know which of these officers we asked to become members. I am not clear.

A No, sir.

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Q Isn't it a fact that the people were not told that the money they were contributing was going to the Long Island Public Affairs Club?

A None of the officers that I heard testify recall being told that their moneys went into the Long Island Publi c Affairs Club.

Q Did that refresh your recollection that they were not?

A That's what I said, sir.

Q There was never any meeting held as to the Long Island Public Affairs Club?

A No.

Q No installation of officers at a swearing-in ceremony?

A I know we put out a news announcement on the formation of the club.

Q Do you have that, sir?

A No sir, it should be with your records or the bank's records.

Q Have you seen such a document produced here at trial?

A No, sir.

Q These records of the Long Island Public Affairs Club and the announcement would be kept in the normal course

of the bank's operation?

A Yes, sir.

Q Just as the guidelines?

A Yes, sir.

Q Did you ever get a formal set of by-laws from Mr. Driscoll?

A I don't believe so. I never saw it.

Q By the way --

MR. COHN: I want the record to show that Mr. Ryan turned over a document to Mr. Katzberg.

Q None of the so-called non-bank personnel were ever brought into the club, isn't that right?

A Mr. Dutra thought we ought to open it to everybody and I said I had no objection to it, but I did not see how in the world we were going to get people that weren't identified with the interests of the bank to become members. He felt that some of the directors might or the shareholders might and certainly anybody who wanted to contribute funds would have been welcomed.

Q But it never happened?

A Not to my knowledge.

Q What was the nature of the change? What change other than the name?

A Other than the name? The only other change was

we were going to have a formal club organization instead of the Betty Jeager fund. Other than that there was to be no change.

Q But that never took place?

A What took place?

Q The formal club never came into being?

A As I said I am afraid the time it took Mr. Dutra to get the by-laws off the ground, we unfortunately -- we were requested by the lawyers to discontinue.

Q So nothing happened?

A We had no formal meeting.

Q So the only difference between the Betty Jaeger system and the Long Island Public Affairs System was the name?

A Yes, sir.

MR. KATZBERG: I ask that this be marked as the next exhibit, what Mr. Ryan handed to me?

THE CLERK: One-page document marked for identification as Government Exhibit 188.

(So marked.)

Q I show you Exhibit 188 for identification and I ask you if this is the bulletin that you are referring to?

Look at the next to last paragraph. I think that is probably the appropriate one.

A I think that was one of them. We also put out a broader news release.

MR. KATZBERG: Do you have that, gentlemen?

MR. RYAN: That is the only bulletin I have.

Q Let us confine ourselves to this one exhibit, Exhibit 188. It is signed by Mr. Lamberton?

MR. NAFTALIS: I have no objection to it being admitted into evidence.

MR. PATTISON: Your Honor --

THE COURT: He has a right to question the way he wishes.

Q Is there anything on Exhibit 188 which mentions the fact that officers are contributing to the fund, the Long Island Public Affairs Club, and that those officers are being given salary increases for that?

A Just says a group of officers have formed the Long Island Public Affairs Club, which will encourage and coordinate.

Q It doesn't mention salary increases?

A No, sir.

Q It doesn't mention specifically political contributions?

A It says here: "The club, which has limited participation in public affairs."

Talking about political contributions: "
"Corporations including banks are prohibited from making contributions to political parties. The club, which has limited resources, will make some contributions. Please refer any such requests directed to the bank to Joseph F. Dutra, marketing division, for consideration."

Q Isn't it a fact that the club resources were as broad as the bank's resources?

A No, sir.

MR. COHN: I will object to that as argumentative.

THE COURT: Yes.

Q It was perfectly legal for the bank to give the officers as much money as necessary to make the contributions, so how could the resources be limited?

MR. COHN: Objection, argumentative.

THE COURT: Yes, sustained.

Q You told us yesterday, I believe, about the municipal accounts and the bank's desire to get those accounts?

A Yes, sir.

Q And the various services that the bank offered in order to acquire those accounts -- to attract those accounts?

A Yes, sir.

Q Check reconciliation and the other things?

A Yes.

Q Isn't it a fact that none of those services that you said a bank could offer were exclusive to the Security National Bank?

A No sir, we all offered it.

Q Isn't it a fact that none of these services that you said a bank could offer were exclusive to the Security National Bank?

A No sir, we all offered it.

Q Isn't it a fact that every single bank had the same exact services they could offer the municipalities, the political parties, that you had?

A I thought that ours were better.

Q The others had the same and I am sure that they felt theirs were better?

A Probably.

Q And isn't it further a fact that the only way you could do more for these municipalities, to acquire these accounts, was to make more political contributions?

A No, sir.

Q Are you telling us, sir, that the amount of political contributions that were made by the Security National Bank was not intended to acquire the municipal

accounts?

A I don't think you understand. Political contributions do not go to the pockets of politicians. They go to the regular organized parties and that is an important factor in that we are willing to support their parties in terms of attending their functions.

To be honest, many of the times they'd rather have us at the functions because we were a group of influential -- supposedly -- people who might support their parties, because we were there and subject to their, you know, propaganda, and I think that was a factor. I think from our standpoint it was important that we attend these affairs to be able to meet the politicians and the political leaders, ingratiate ourselves, develop further friendships with them. From our standpoint, other than offering the services, developing relationships with the individuals that could help us, to have them hear our story a little better, if we could get to know one of the treasurers of one of the counties and he felt friendly towards us, and if he had a problem he might come to us and we might solve it better than let us say the National City Bank, we might get a better share of the deposits. Nothing mysterious is still the answer.

Q Isn't it a fact when you went to these dinners

it was the money that they wanted, the $200 a seat?

A They wanted the money, yes.

Q You knew full well that the money they wanted was for their campaigns; isn't that right?

A They told us it was for their administrative expenses and for the running of their campaigns.

Q Right.

So you would help them and they would look more favorably upon you?

A Sir, believe it or not, these political parties do not run in any way that buying tickets to affairs buys anything. It doesn't buy a deposit or a friendship.

Q There would be no reason whatsoever to make the contribution; isn't that right?

A They expected you to support them and they also gave us the opportunity to develop our friendship with them, but there was nothing underhanded about any of this.

(Continued next page.)

A YEs.

Q There came a time in June of 1970 -- did there come a time, when as you told us earlier, funds were running low?

A Yes, sir.

Q You had already borrowed $15,000 from Mr. Shea in May?

A Yes.

Q And you had to pay back Mr. Shea and meet these new commitments; isn't that right, sir?

A Yes.

Q So the club was to be expanded?

A Yes, sir.

Q New members?

A We knew we had to face the problem so that by the end of the year we had enough additionally officers --

Q New members?

A Yes.

Q New members equaled more money?

A Yes.

Q Now, there came a time, did there not, when in June of 1970 you and Mr. Dutra went to Mr. Travers?

A Yes, sir.

Q You had a list with you, sir?

A Yes, sir.

Q A list of the members and a list of the existing members?

A Yes, sir.

Q Where did you get the list of the existing members?

A Mr. Dutra must have kept that as part of his central file.

I asked when he took on the responsibility to keep a set of records so he could account as to where the monies went.

Q You got it from Mr. Dutra?

A Yes.

Q What about the new members?

A I don't know if Mr. Casey was involved but we went down the list of senior vice presidents and above and picked those nmaes we thought would be interested in joining this group.

Q It couldn't have been Mr. Casey. He was brought in in late 1970, was he not?

A He was brought in in the beginning of 1970 and by the summer he was actively in charge of the business development function and we could have well spoken to him but it's not important --

Q Sir, this is June of '69.

A Oh, I'm sorry, sir.

I don't think Mr. Casey was there.

Q He wasn't even in the bank, was he?

A That's right. It would have been Mr. Dutra and myself.

Q Anybody else?

A I don't think so.

Q How many names did you come up with?

A I don't recall now but you told me there were 20 and if you give me a copy of that list I am sure I could identify them.

Q Let's first focus on how many there were.

Does it sound right to you that there were about 20 new people proposed for the contributions?

A That could be.

Q And you Mr. Dutra decided on the names?

A We picked out potential names.

Q Did you discuss with Mr. Clifford the idea that the contributions method had to be expanded?

A I don't recall.

Q Didn't you report to him on a daily basis?

A Not as to matters like this --

MR. BANNIGAN: Objection.

It is argumentative in light of the other questions.

THE COURT: I will allow it.

A (continuing) Mr. Travers was president and Mr. Clifford had moved up to chairman and I guess I normally would have expected to deal with the president on it.

Q Didn't you discuss with Mr. Clifford the $15,000 Shea loan?

A Yes, sir.

Q Because the contributions' fund was low on money?

A I tried to borrow it from Mr. Clifford.

Q Mr. Dowd, didn't you discuss the fact that the club was low on funds with Mr. Clifford?

A Yes, sir.

Q Are you telling us that after discussing the need to generate more money with Mr. Clifford you didn't discuss with him the way in which you would solve that problem?

A I'm sure -- based on what you're saying that I probably -- I am sure I would have mentioned it to him. I'm sure.

Q In this discussion with Mr. Clifford as to expanding the club to bring in more money did Mr. Clifford approve it or disapprove the plan?

MR. NAFTALIS: Objection.

He said he had no recollection.

THE COURT: You can answer.

A I'm not clear on this, sir, and I don't want to give you a statement I'm not sure of.

Q Isn't it a fact that Mr. Clifford himself introduced three of the men into the expanded organization; Mr. Corriss, Mr. Wulffleff and Mr. Lowe?

A Right.

Q If he introduced --

A (continuing) This is 1969? You're talking 1969 now; right?

Q Late 1969 and the club was, was it not, expanded in 1970?

A Yes, sir, but you're mixing apples and oranges --

Q If you would just answer --

MR. BANNIGAN: He said '69 in his first question to this witness.

THE COURT: All right.

Go ahead.

Q In the normal chain of command between yourself and Mr. Clifford you were his right hand man?

A Yes, but I think my role as assistant had somewhat diminished and I had more direct responsibilities.

Q Did you implement the system of expanding the contributions' organization without Mr. Clifford's approval?

A No, sir.

Q Did you discuss with Mr. Clifford the names of the people you had come up with as potential members of the contributions' organization?

A Every yearend when we reviewed the salaries we came up with a list of officers we would recommend for political increases forthe club and those total salary recommendations would be reviewed with the chairman and Mr. Clifford.

Q We are talking about June of 1969?

A I don't believe I would have reviewed it with Mr. Clifford. It could have happened.

Q In June of 1969 you had alist of potential members?

A Yes, sir.

Q You are telling us you never discussed with Mr. Clifford the names of any of the potential members?

A Would you repeat that, please?

MR. KATZBERG: I respectfully ask the question be read.

(Record read by reporter.)

A No, sir, I just can't recall whether I discussed

it with him or not.

Q You have no recollection?

A No recollection.

Q Isn't it a fact that, again, talking about June of 1969, you and Mr. Dutra went to Martin Travers?

A Yes, sir.

Q And you had those lists with you; is that right, sir?

A Yes.

(Continued on next page)

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BY MR. KATZBERG:

Q The old members, current members and new members?

A Yes, sir.

Q And you went over with Mr. Travers, the list of the new members, because he in his capacity at the bank, interviewed a number of those new people to get them into the bank; is that correct, sir?

A Yes, sir. Although I must say that I don't know whether we're still talking about 1969 or 1970.

Q June of 1969.

A June of 1969, yes, sir.

I recall Mr. Travers testifying here and tothe best of my knowledge, his testimony on that is what I recall also.

Q So you recall that you asked Mr. Travers for some information about these potential club members; is that right, sir?

A Yes, sir.

Q And Mr. Travers told you that he didn't want to have anything to do with it; is that correct, sir?

A Yes, sir.

Q Mr. Travers told you, did he not, that when he hired these people in the bank, he never told them

about contributions and felt it was unfair to ask them now, after they were hired?

A Yes, sir.

Q And you told Mr. Travers: Don't worry about that, Marty -- or -- Mr. Travers -- whatever you called him --

A Mr. Travers.

Q -- just like the old participants, the new ones will get salary increases to pay for their contributions, so the fact we never told them doesn't hurt them?

A Sir, you don't talk like that to a bank president. I didn't.

I told him the plan was approved by the lawyers originally, and what the recommendation would be -- would be to ask them if they'd like to join the club, if they would like to do it on a voluntary basis with his concurrence, and Mr. Clifford, to give them a raise to enable them to be in a position to make the contributions.

Q So you told them they would get raises and not be hurt financially?

A I'm sure that's what I passed on to Mr. Travers.

Q Now, who did the introducing of these new contributors?

MR. COHN: A timeframe, please?

MR. KATZBERG: 1970.

A This would be the end of '69.

Q The end of 1970, when Casey was brought in, for example -- talking about Casey --

A Yes.

Q -- Wulffleff --

A Yes.

Q -- Lowe, Corriss, Robert Doud, Bursterbrink (ph) -- is that how he pronounces his name -- Walter?

A Yes.

Q Now, Mr. Clifford introduced Mr. Lowe, Mr. Corriss -- is that correct, sir -- and Mr. Wulffleff?

A Yes. That's what he testified to.

Q Do you remember that, sir?

A Yes, sir.

Q Independent of what the testimony was --

A I don't recall it but his testimony refreshes my recollection.

Q Who introduced Robert Doud?

A Probably Mr. Powell. He worked for Mr. Powell.

Q Who else did he introduce late 1970 into the club, do you recall?

A Forgive me. I can't recally recall.

Q Do you recall other than Mr. Casey, who else you introduced?

A No, but if you give me the list of the people introduced there, I can identify all those who worked for me.

Q Did you draw up a specific list of those people who were included into the club?

A Oh, yes.

Q Do you have that list?

A No, sir.

Q I think, Mr. Dowd, what we can do is to show you Mr. Chadwick's 1974 records --

A '74 records?

Q Yes, sir -- and compare that to the Long Island Public Affairs Club memo with the 27 people who were in the contributions organization prior to its expansion.

A I don't think this will be accurate for '70. It includes '71, '72, '73.

Q This is all we've unfortunately -- and see if you can go down the list and see if you see any people not on that March 27th memorandum who were in the club that you introduced in 1974.

(Document handed to witness.)

(Pause.)

A Here's Mr. Lew (ph).

Q Did you speak to Mr. Lew?

A I did.

Q Anybody else?

I believe the list continues on the next page, Mr. Dowd, if you can bear with us.

(Pause.)

A That's the only additional name that comes to mind in reviewing this.

Q That's the only one you can remember yourself introducing into the club?

A Right. But I have no reservation in admitting and testifying that any of the officers I spoke to I asked them to join the club.

Q There is no question about that?

A No question.

Q Now, the list that you told us about of the new members, would that be kept in the normal course of the business of the bank?

A I would think so.

Q Do you have that list, sir?

A No, sir.

MR. COHN: You have the bank records.

MR. PATTISON: We don'thave that.

May we approach the bench, please?

(The following occurred at side bar.)

THE COURT: What's the problem?

MR. COHN: I have no problem.

MR. PATTISON: Your Honor, ours is this.

Prior to the trial and as a matter of fact, during about two or so years ago, we served the bank with process for any and all records concerning political contributions, lists of members of the club, any and all documents reflective of this.

We did not get many of the items Mr. Dowd now says there were and were presumably kept in the ordinary course.

I think we have a right to show this now.

MR. COHN: Mr. Dowd left the bank in September, 1972. He hasn't set foot in that bank until today.

It's unfair for the prosecutor to call on him to produce records.

MR. PATTISON: I am not. I would call on Mr. Bannigan to produce the records of his client.

MR. BANNIGAN: You served a subpoena duces tecum on Shea, Gould. You never asked me.

Take it up with Sea, Gould. They're counsel for the Bank, except for the trial. You deal with them.

They asked Mr. Katzberg and invited him to come down and look at documents.

THE COURT: But Dowd is on the witness stand.

MR. PATTISON: What I'd want to show now is that the bank did not produce these records.

THE COURT: Through whom? Dowd?

He wasn't there.

MR. PATTISON: Not Dowd.

THE COURT: Who are you going to ask?

MR. NAFTALIS: Who is it admissible against?

MR. PATTISON: I would like Mr. Katzberg so to state --

THE COURT: To who -- the Jury? No.

You are asking for records to be produced at a time when the man wasn't there.

MR. PATTISON: All I want to show is that Mr. Dowd verified that a document did exist, number one.

Number two, he verified that at least up until the time he left, it was kept in the ordinary course.

THE COURT: How does he know that?

MR. PATTISON: It's implied when he says you have all the records.

It shows nothing as far as he goes.

THE COURT: So you can only ask as to the time he was there.

MR. PATTISON: Yes.

MR. COHN: They have this theory that we destroyed the records and all that baloney.

It suddenly dawns on me.

THE COURT: Where have you been?

What's the reason for it with this witness?

You are talking about something that takes place two years after he left the bank.

MR. PATTISON: The only reason that this witness blurted out not in answer to anything -- you have all the records --

THE COURT: So what? He's talking about the time he was there.

MR. PATTISON: We just want to clarify that misapprehension.

MR. COHN: I object to that.

THE COURT: I agree.

MR. NAFTALIS: May I make a motion for the

record?

THE COURT: You can't clarify through this witness?

MR. NAFTALIS: I would make a motion on behalf of the defendants Dowd and Clifford, based on Mr. Katzberg whirling around and saying: I want that record, to Mr. Cohn --

THE COURT: That doesn't influence anybody.

MR. NAFRALIS: It's one thing to ask outside the presence of the Jury, but as your Honor instructed the Jury, there is no obligation on the defendant to produce evidence or do anything and it is terribly unfair for Mr. Katzberg to do that and it looks like Mr. Cohn is hiding something.

THE COURT: He's not worried.

MR. PATTISON: Your Honor, this lawyer who now makes a motion for a mistrial blurts out: We don't object to its being offered in evidence --

MR. NAFTALIS: That's after you were reading a document.

MR. PATTISON: I was?

MR. NAFTALIS: Katzberg was.

THE COURT: Denied.

(The following occurred in open Court.)

MR. KATZBERG: Where do we stand, Judge?

THE COURT: You weren't with us.

In any event, it's been denied.

Go ahead.

BY MR. KATZBERG:

Q Now, Mr. Dowd, you were telling us on your direct examination that there came a time in 1970 that Mr. Powell showed you this Wall Street Journal article dated November 21, 1969, Exhibit 162.

A Yes, sir.

Q Do you remember seeing that in 1970?

A Yes.

Q Remember reading it in '70?

A Yes, sir.

Q Now, when you read it -- withdrawn -- you will notice that in the middle column there is a bracketed paragraph and below that a circled paragraph.

A Yes, sir.

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(Continued on next page.)

BY MR. KATZBERG: (Cont'd.)

Q When you read this in '70, were the brackets or circles on there, sir?

A Yes.

Q And that was bracketed and circled, to the best of your knowledge, by Mr. Powell?

A Yes, sir.

Q Now, the circled paragraph refers to a speech made by Commissioner Thrower of the IRS, the Internal Revenue Service?

A That's what it says.

Q He was outlining practices which according to this article --

MR. COHN: I have no objection to counsel referring to the article but I remind your Honor that there were certain portions of that article that were not to be read.

MR. KATZBERG: I am referring to the paragraphs read in evidence.

THE COURT: Okay.

Q Certain practices that are illegal --

MR. BANNIGAN: I object. Which are alleged.

Q Which are alleged by the Commissioner of the IRS to be illegal, is that correct, sir?

MR. COHN: Would you identify IRS, please, for the jury?

MR. KATZBERG: I think the jury knows what IRS means, Mr. Cohn.

A What it says is that it relates to certain cynical practices being uncovered --

MR. COHN: I don't think the witness should read unless your Honor is satisfied that he's reading from that portion your Honor has allowed to be read.

MR. KATZBERG: He's reading from this paragraph and this paragraph -- the introductory and these two --

THE COURT: I don't know about this.

MR. KATZBERG: This wasn't excluded.

THE COURT: This was.

BY MR. KATZBERG:

Q You read that article and you saw those paragraphs circled where, in the opinion of the Commissioner of the IRS, to be illegal, is that correct, sir?

A He says, "cynical practice", but I think the inference is that they are illegal, yes, right.

Q Illegal?

A It doesn't say it but that's certainly the

inference.

Q Criminal -- that didn't mean illegal to you, sir?

A Yes, sir.

Q And one of those practices is to grant bonuses to executives -- doesn't it say that, sir?

A Yes, sir.

Q Leaving enough money so that the executive could pay for the tax increase on the additional income, isn't that correct, sir?

A Yes, sir.

Q And that was one of the cynical practices --

A Yes --

Q -- disapproved of by the Commissioner of the IRS, isn't that correct, sir?

A Yes, sir.

Q You told us that there came a time when you had a conversation with Mr. DeGenaro about that article?

A Yes, sir.

Q You were concerned about that article, weren't you, sir?

A Yes, sir.

Q Because that circled paragraph includes a paragraph --

MR. COHN: Objection, your Honor. It's not a question. It's a statement by Mr. Katzberg.

THE COURT: He didn't finish the question yet. I don't know what the question will be. Let's hear it.

Q Isn't it a fact that that circled paragraph outlines a practice quite similar to the practice you were engaged in at the Security National Bank?

A It certainly concerned me when I read it.

Q And it concerned you because it bore a striking resemblance, didn't it, to what you were doing?

A Yes, sir.

Q No question about that?

A No, sir.

Q Didn't that give you cause, didn't that give you reason, didn't that give you doubt about the legality of what you were doing, sir?

A It gave me enough concern to ask Mr. DeGenaro, "Is our program in violation of the law?" after reviewing this article.

Q So, there did come a time from the beginning of this program in 1967 until the very same day we're now, that you did have serious doubt as to the legality of the program you were involved in at the bank?

A No, sir. When I read this article -- Mr. Powell had showed it to Mr. DeGenaro -- Mr. DeGenaro called me on the telephone and after he got through telling me he wanted the checks issued by the individual officers he told me --

Q Let's just focus, Mr. Dowd, --

MR. BANNIGAN: Let him finish.

MR. KATZBERG: It's not responsive.

THE COURT: Yes. The question is whether or not he had serious doubts --

MR. KATZBERG: At the time he read the article --

THE COURT: I will allow it.

A I spoke to Mr. DeGenaro and said, "George, I have just read this article. Are we in violation of the law," and he said, "Dave are you doing any of these things?" and I said, "No, but there is a section that says bonuses." He said, "Are you giving bonuses?" I said, "No." He said, "That's why we set up the program originally. The program you have complies with the law. There's no criticism here of it. You need not be concerned."

Q Bonuses and salary increases are two different things, is that right, sir?

A That's right.

Q When a bank gives an officer a bonus, doesn't it take its money and give it to the officer?

A I think the difference is, sir, --

Q Can you answer my question

When a bank gives money to an officer in a bonus, doesn't it take its money and give that money to an officer -- yes or no?

A Yes.

Q When a bank gives an officer a salary increase, doesn't the bank gives its money, the bank's money to an officer?

A Yes, sir.

Q And isn't it a fact that by granting an officer a salary increase which stayed with his salary each year, you were in effect granting him a bonus each and every year?

A No, sir.

Q Isn't it a fact that that money that the bank gave to the officer for the specific purpose of making a political contribution is the same thing as giving him a bonus for the specific purpose of making a political contribution?

A Mr. DeGenaro said bonuses would be reimbursement which is prohibited by law.

Q What about before the bonus was made -- a

bonus before a contribution wouldn't be reimbursement?

A You are asking me to comment on areas I am not qualified to.

Q You can't tell us whether a bonus given before somebody makes a contribution is reimbursement?

A The inference of that -- sir, you are a lawyer and to my knowledge cerrainly if we gave a reimbursement -- if we gave a fellar a bonus before he made the contribution, it wouldn't seem to be reimbursement.

Q It wouldn't be the same as giving him a salary increase?

MR. BANNIGAN: Objection. He was asked --

THE COURT: It is for the jury to determine whether salary increase and bonuses are one and the same thing.

Q When you read this article, you were already aware that when you asked Mr. DeGenaro for a written opinion, you couldn't get one?

A Yes.

Q And when Mr. Clifford asked Mr. Shea for a written opinion he couldn't get one either?

MR. BANNIGAN: Objection. Asked and answered.

THE COURT: I will allow it.

Do you know that?

THE WITNESS: Yes.

Q Did it strike you when you read this article that maybe you better get a written opinion?

MR. COHN: Objection. Argumentative.

THE COURT: Whatever strikes him is argumentative.

Q Did it occur to you to again seek a written opinion to see where you stood?

MR. COHN: Objection.

THE COURT: It's a question of whether he got an opinion. It doesn't have to be written.

MR. COHN: Let him ask if he asked for an opinion.

THE COURT: Whether written or oral, either way.

Q Did you ask for a written opinion from Mr. DeGenaro at that time?

A No. I felt the matter of the opinion was put to bed earlier.

(Continued on next page.)

BY MR. KATZBERG:

Q Now, Mr. Driscoll was at the bank at this time, wasn't he?

A Yes.

Q In-house counsel?

A Yes.

Q He didn't charge like the Shea firm did for each bit of work he did but was on a flat salary?

A Yes.

Q Did you ask Mr. Driscoll at that time?

A It wouldn't be appropriate to ask him. The right person, if I had concern, was Mr. DeGenaro. I had Mr. DeGenaro's absolute assurances that we were engaged in any practices outlinsdin that article.

Q Did you ask Mr. Driscoll?

A You wouldan't ask Mr. Driscoll on that.

Q You didn't ask anybody else; is that right?

A No, sir.

THE COURT: Are you going to something else nc .

MR. KATZBERG: Yes.

THE COUNT: We will take a recess now.

(Recess taken.)

(After recess. Jury present.)

BY MR. KATZBERG:

Q Mr. Dowd, I want to correct an inadvertent reference to the wrong date.

Do you recall we were talking about the meeting with Mr. Travers in June, when you and Dutra asked him to help figure out who should be in the club to expand the organization and how best to approach these people and I referred to 1996, and you answered questions as to 1969.

Is it true the conversation we were talking about was June, 1970?

A that's what I suggested.

Q So everything you spoke about that we referred to, 1969, we know that would be June, 1970.

Nothing you want to change about it just because the date is another year?

A No, sir.

Q You told us what Mr. DeGenaro told you about this Wall Street Journal; is that right?

A Yes.

Q He told you of a decision to change the contributions made at that time?

A Yes.

Q He told you the method had nothing to do with

the article?

A Yes.

Q He advised the new method using individual checks was the right way to do it legally?

A Yes.

Q You said to Mr. DeGenaro, "Well, if you are telling me as a matter of law that this new way is the right way, then we will do it"?

A Yes, sir.

Q Didn't that mean to you the old way was not correct, as a matter of law?

MR. COHN: I object.

THE COURT: I don't think the question is proper. Rephrase it.

Q Mr. DeGenaro strongly suggested to you that the individual check method and not the account method was the right way from the legal point of view; isn't that right?

A Yes.

Q Didn't you understand that to mean the Jaeger method, the combining of the account was not the legal way to do it?

MR. COHN: Objection.

THE COURT: No, sir.

A He told me originally that there wasn't

sufficient law on this. He said in the beginning, if this thing does, in time we will have to make modifications.

In all regulations, in making loans, there is a constant change, and it is customary for counsel to update you on new practice in relation to what was accetpable.

Q So the Betty Jaeger system was no longer acceptable?

A To him.

Q From a legal point of view?

A That's what he said.

Q Did that raise questions in your mind as to the legality you were engaged in from '67 to the time you spoke to him?

A That's how we handled this matter.

Things are changing and we keep on top of them to make sure of the changes.

I didn't feel it his suggestions to make this change other than good legal advice.

Q The law wasn't changed at that time, was it?

A Not that I know of.

Q Yet he advised you the system you were using was not proper from a legal point of view?

A All regulations change. If a lawyer says modify your practice to conform, what's more acceptable practice seemed to be normal.

I didn't question is instructions because of that background.

Q Did you ask him if the law changed?

A No.

Q Did you ask him how come we can do it before and not now?

A No.

Q Did you ask him we were doing something wrong before?

A It's not customary to tell lawyers what to do.

We paid him an awful lot of money for advice and it is customary to accept it.

Q Weren't you able to ask him questions about it?

A If I had doubts about it, I would have.

Q This raised no doubts in your mind?

A It honestly did not.

Q When he told you the method you are using now is not proper from a legal point of view, that didn't raise any doubts in your mind?

A No.

Q Did you speak to Mr. Clifford about that Wall Street article?

A I don't recall. We might have. Mr. Powell probably did.

Q Did you?

A I don't recall.

Q Did you speak to Mr. Clifford about your conversation with Mr. DeGenaro?

A I don't recall. I couldhave.

Q The system had to be changed?

A Yes, I spoke to him about that but I don't know if I went into the detailed discussion about the article. I believe I would have.

Q It was the article that led to the change?

A He said no.

Q There would have been no conversation without the article?

MR. NAFTALIS: That's argumentative.

THE COURT: It is argumentative.

Proceed.

Q You spoke to Mr. Clifford about what you and Mr. DeGenaro discussed?

A I only recall telling him Mr. DeGenaro wanted

us to change the system to have the officers issue individual checks.

Q You never discussed with Mr. Clifford the Wall Street Journal article?

A I could have, probably did, but I don't recall.

Q Did you ever speak to Mr. Powell whether or not he spoke to Mr. Clifford about the Wall Street Journal?

A I don't recall. I don't think so.

Q There came a time, did there not, ealy 1968, when asterisks were placed on the Visi cards of the people who received contribution raises; is that correct?

A That's what I have heard here.

Q When for the first time did you learn that those asterisks were placed on those Visi cards?

A I don't ever think I know that astarisks were put on. I know at the officer salary meetings, the first year, perhaps, the second year, that we discussed we wanted to differentiate on the records those officers who got $1,700 raises and contributing.

I suggested we have a system to differentiate so we didn't mix the fellow up the next year where he got a $2,70 raise, therefore he don't have to give him a

raise this year, merit raise, and get confused.

Q Because you knew that contribution money wasn't really his income; isn't that right?

A No, it was absolutely his income.

Q Why distinctions?

A If the officer was entitled to $1,000 last year and thie year he was entitled to another $1,000, we wanted to be fair and not cut him out by saying last year he got $2,700.

Q Because part of that raise was for the contribution?

A That's right.

Q It wasn't a merit raise?

A That's right.

Q Therefore not his money?

A It was his money.

Q Money he had to return?

A We had a right to call on him.

MR. NAFTALIS: Asked and answered.

THE WITNESS: He didn't have to. We had the right to call on him for contributions. He was to do with the money as he wanted and not the property of the bank.

Q When you called on this man, he was to remit

$100?

A No legal requirement. No officer was ever told he was required by law or any regulation to contribute.

Q The $1,700 was made for the man to make contributions?

A Yes.

Q If he agreed to make the contributions, he would get the raise?

A No. The other way around. If he agreed to join the club, he got the raise.

Q Once he agreed to contribute and once he got the raise, he was responsible under the agreement to return $100 each month?

A I felt he was morally committed.

Q Based on that moral commitment that wasn't his money to spend on a new house?

A I know I spent that money at times. If I were short, I asked Mr. Chardwick to pass me by for a week or two.

Q But he came back?

A Yes.

(Continued on next page.)

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BY MR. KATZBERG:

Q So you couldn't pay that $1,200 on a Korvette?

A On a Korvette?

Q Or any object you chose?

A As a matter of fact we did spend it. When we were short and he called us the next month we didn't have the money but got the money.

Q You were responsible for that $100 every month?

A Yes, sir.

Q You and the other officers had that moral commitment that every month you were to give back $1,700?

A Yes, sir.

Q That's why those raises were different raises, had been distinguished from the officers on the salary?

A Yes, sir.

Q Because the bank had the right to call the officers to remit $100 of that money?

A Yes.

Q That's why they were distinguished from the rest of the man's money?

A Yes, sir.

Q At this meeting what method did you agree upon to distinguish those raises?

A I don't recall any discussion on that, just there should be a distinction.

Q Do you recall a conversation how this would be accomplished?

A I don't thing it was a committee function.

Q Did anyone recommend that the personnel records had a notation next to the $1,700 raises , political contributions increase?

A Not that I recall.

Q Anybody recommend that any records of the bank referring to those increases say on them, political contribution raises?

A No, sir. You don't keep those kinds of records, you don't put whether it's retirement or enable him to make contributions. I don't think any records ever distinguished the purpose for the raise.

Q But these raises were different raises?

A We had raises given to people who were going to retire. It would help them increase thir pension if you gave them a large raise. We didn't put that on the record, people may infer on the 63rd year they become very available to the bank when it wasn't the fact.

Q When, for the first time that asterisks were the chosen method?

A Only at this trial.

Q You were never told by Powell, Brogan, that they decided to do it that way?

A It probably was Mr. Brogan's function.

Q Did you speak to them and they told you that?

A No. It was clear we agreed, that included Mr. Spitzbart, who was a director that this would be the method to distinguish the raises, that portion, enabling them to make political contributions.

Q Was there any discussion this would be discreet?

A No.

Q You have no idea what the method was?

A No, sir.

Q Did there come a time in March of 1971, when you learned there were causes to be erasures on the Visi cards?

MR. COHN: May I have the question read back, please?

THE COURT: Read it back.

(Question read)

MR. COHN: I am going to object to that, your Honor.

THE COURT: Causes --

MR. KATZBERG: There were causes to be erasures.

THE COURT: Did he know it?

THE WITNESS: No, sir.

BY MR. KATZBERG:

Q Never heard about that?

A No.

Q Are you saying the first time you heard about the erasures was here in court?

A Yes.

Q Up to that time no one told you anything about that?

A Never even discussed.

Q You told us about the article -- I have a copy here. Do youhave the one used in evidence -- it is the political loan bill signed by Nixon. Can I use the copies?

MR. COHN: No objection.

Q I show you a copy of an article shown to you yesterday and a copy of the memorandum you wrote in February of '72.

Do you recognize those?

A Yes, sir.

MR. COHN: Mr. Katzberg, is this the documents you are showing him?

MR. KATZBERG: Yes.

For the record it's Exhibit 22 in evidence.

Q Do you recognize that, sir?

A Yes, sir.

(Continued on next page.)

Q You told us, did you not, that you mailed that off to the safe?

A Yes.

Q And that you sent it to Mr. De Gennaro again?

A Yes.

Q And you got no response?

A Yes.

Q And that you got no response and therefore you decided to send them the memorandum, to send the memorandum to Mr. Clifford, send a copy to Mr. De Gennaro and attempt to evoke a response?

Is that fair to say?

A Yes.

Q Do you have the numbers there?

MR. COHN: Here they are?

Q The memorandum is LL-1 in evidence and that is the memorandum you sent after you got no response from De Gennaro?

A Yes.

Q Now, thereafter did you get a response from Mr. De Gennaro?

A Yes.

Q Now, does it say anywhere in the memorandum that you sent to Mr. Clifford with respect to the contributions

method, with respect thereto, does it say anything about raises?

A No. It is only about decentralization of the fund.

Q All it says is individual officers to make their own contributions?

A It says what this new law that President Nixon signed would be to centralize our present system under which individual officers make their own contribution.

Q The only description of the system is individual officers make their contributions?

A Yes, sir.

Q Back in '67 and '68 when you wanted to evoke a respone from Mr. De Gennaro with respect to getting an opinion, did you send a memorandum to Mr. Clifford with a copy to Mr. De Gennaro to get a response from him then?

A Originally?

Q Yes.

A Mr. Clifford said he already had spoken to Mr. Shea and had authorization for me to deal with Mr. De Gennaro.

Q Did you in 1967 and '68 in order to get a response from Mr. De Gennaro send a memorandum like this one in order to get an opinion letter?

A No, sir. I went to Mr. Clifford both times.

this time I sent a memorandum to Mr. Clifford for authorization to have Mr. De Cennaro explore this area.

Q The practice you followed in 1972 was not what you followed in '68?

A It was the other way around. When Mr. Clifford asked me to do something I didn't ask him to give me a memorandum.

Q The point is in 1972 you sent a memorandum and 1967 and '68 you did not?

A That is right.

Q You alse referred to another news article about government contractors.

Is that correct?

A Yes.

Q A crippling blow dealt to business political funds?

A Yes.

Q August 12, 1972.

May I have a copy of that, Mr. Cohn?

I will identify that as Exhibit Tf in evidence/

Is that correct?

A Yes.

Q You told us that article caused you some concern; isn't that right?

A Yes.

Q You told us that the Shea firm never told you about your role as a contractor with respect to the contribution law?

A Right.

Q And because they never told you about that that cause you to be concerned about all the advice they gave you on political contributions?

MR. COHN: I object.

THE COURT: He is asking him.

MR. PATTISON: It is a proper question.

THE COURT: You asked him.

MR. KATZBERG: May the question be read back?

THE COURT: Yes.

(The Court Reporter hereupon read the last question.)

Q Is that correct?

A I was really ticked off.

Q You were concerned about the advice they had given you as to the contribution method now in effect from '67 through '72?

A If they could miss something as us being a government contractor, could they have missed anything else?

Q And concerning the contribution method you were

dealing with?

A Yes.

Q So based on that concern you sent the memorandum to Mr. Steffan?

A Yes.

Q August 21, 1972?

A Yes.

Q I show you defendant's Exhibit SSS. Is that the memorandum you are talking about?

A That is the one I sent.

Q SSS is for identification and TTT is the document actually in evidence; is that correct?

A Yes.

Q Now, the very date -- the very heading of that document it says confidential; is that right?

A Yes.

Q Tell us why it says that.

A I think something involved the question of competency, of what I felt was a whole thing, about counsel, [illegible]

Q Did you discuss the competency of counsel in that whole area?

A That is what the whole thing is about.

Q Where does it say competency of counsel?

A When I went to Mr. Steffan and I explained to him this article he had known about it and I suggested I will send you a memorandum suggesting you go over the whole thing again. All I said in the letter is -- the question is, does the memorandum refer --

MR. COHN: Your Honor, may he finish his answer?

THE COURT: Is the word competent in there?

THE WITNESS: No, the word competent is not in there.

MR. COHN: I believe Mr. Dowd was beginning to read from the Exhibit to support his answer and Mr. Katzberg, I believe, interrupted him.

May I now respectfully request that the witness be permitted to finish?

THE COURT: You may proceed with that on redirect.

(continued next page)

Q Now, this memorandum says, does it not, that you avoided with Mr. Clifford's complete acquiescence having him involved in the approval or knowledge of any contributions?

MR. NAFTALIS: I think he should read it accurately.

MR. PATTISON: Please.

THE COURT: He can ask the question. He is Mr. Cohn's witness. He is not objecting.

Q Isn't that correct, sir?

A It says, "Mr. Clifford or Mr. Travers involvement."

Q "With Pat's complete acquiescence", that's Pat Clifford?

A Yes, sir.

Q You avoided -- let us take Mr. Clifford first.

You avoided having Mr. Clifford involved in the knowledge of --

A Yes.

Q -- the contributions?

A Yes, sir.

Q Mr. Clifford knew all about these contributions, didn't he?

A No, sir. he wouldn't know most of them. If he knew about five per cent of them, it would be a lot.

Q What about the contributions that came to the president's office?

A Those that came to his attention, that he acted on, yes. But 90 per cent never came to him.

Q Does it say, "We avoided him being involved in 90 per cent"?

A No, sir.

Q He said with Mr. Clifford's acquiescence he has no knowledge of the contributions?

A Does it say, "He has no knowledge?

"Involved in the approval or knowledge of any contributions"?

Q That is right, knowledge of any contributions?

Isn't it a fact that Mr. Clifford well knew about at least certain contributions?

A Certain ones that came to his attention, no question about it.

Q Moreover, Mr. Clifford was fully aware, was he not, of the contributions?

A No question about it.

Q And he knew they were being made?

A No question about it.

Q And he knew of the system that made the contributions?

A Yes.

Q And the guidelines that were to be followed?

A Yes.

Q And yet in that memorandum you write that these contributions had been made without Mr. Clifford's knowledge; isn't that right, sir.

A Approval or knowledge.

Q And he both approved contributions --

A Yes, sir.

Q -- and he both knew about contributions; is that right, sir?

A Yes, sir.

Q And you knew that and Mr. Stefan knew that?

A And Mr. Travers.

Q Isn't that right, sir?

A Yes, no question.

Q And yet you wro that to Mr. Stefan in August of 1972; isn't that right?

A The reason I wrote that was to make --

Q The question is, didn't you write it?

A Yes, sir.

Q And this you wrote at atime you were concerned about the political contributions method that was being employed in the bank; isn't that correct, sir?

A I was concerned about this matter of the failure of the attorneys to bring to our attention that we might be a Government contractor and under a different section of the law.

Q And you were concerned?

A Yes, sir.

Q And as you told us before that concern involved not only the Government contractor aspect, but the entire contributions method; isn't that right?

A Not about the law, but about the competency of counsel to be honest.

Q To give you a legal opinion?

A Yes, sir.

Q So therefore about the law?

A Yes, that is why I wrote the memo.

Q That is why you said in the memo, even though it wasn't true, that Mr. Clifford didn't --

MR. COHN: Objection. I ask that the jury be asked to disregard that.

THE COURT: Sustained. Disregard it.

MR. KATZBERG: Your Honor made a ruling with respect to the handwriting. May I go into it now?

THE COURT: That is not in evidence at this point.

MR. KATZBERG: May I show it to him?

THE COURT: Yes.

Q I want to show you SSS for identification. There is some handwriting on the lefthand portion of SSS, is that correct?

A Yes, sir.

Q Now, you recognize that handwriting to be Mr. Stefan's?

A Yes, sir.

Q In fact, it is in red pencil, isn't it?

A Yes.

Q And you know, do you not, that it was Mr. Stefan's practice to write a number of his notes in red pencil?

THE COURT: It presupposes his answer.

A No, I really didn't.

Q That is his handwriting?

A Yes, sir.

MR. KATZBERG: Your Honor, at this time I would move the admission of the entire document that has been bean marked for identification, into evidence. The witness recognizes the handwriting on it.

MR. NAFTALIS: I would object. May I have one question on voir dire?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q Mr. Dowd, referring to SSS, the handwriting in the corner there, which you said you recognized as Mr. Stefan's.

At the time you sent Mr. Stefan that document, did you ever see this handwriting in this document?

A No, sir.

Q Prior to the commencement of this action here, did you ever see this document with this handwriting on it?

A No, sir.

MR. NAFTALIS: I move for its exclusion.

MR. PATTISON: May I inquire on this point?

MR. COHN: Judge, two lawyers?

VOIR DIRE EXAMINATION

BY MR. PATTISON:

Q You said that after you sent this memo, you and he talked about the memo, right?

A Yes, we did.

Q What did you say to him and what did he say to you about this memo?

A He said, "I think you are right. I think we ought to look into this further."

I believe that is the substance of it. I am not positive, Mr. Pattison.

Q And how did he say he would look into it further?

A He would review it with counsel.

Q He would review it with whom, counsel?

A Yes, sir.

Q Did he say he would go and see Pat Clifford?

A I told him I thought he should go back to Mr. DeGenaro and review this particular section regarding Government contractors and the whole matter again.

Q Did there ever come a time when you learned whether or not he ever discussed this memo with Mr. Clifford?

A No, sir. I don't want to --

THE COURT: That is all. You have answered.

Q This underlining, sir, was that on the memo when you saw it?

A No, sir.

Q The red lines?

A No, sir.

Q Did he check with the lawyers?

A I saw the copy --

Q That is Stefan.

A I saw the copies of the memo he got from Driscoll, but not the one he got from DeGenaro if any.

Q Do youknow whether he did?

A I was leaving the bank and I fell -- it was unfortunate that I had to leave him with this unresolved matter, but that was part of his responsibility.

Q After you left the bank, you were in touch with other officers, right?

A Not regularly, not with Mr. Stefan.

Q But there were times when you would call?

MR. BANNIGAN: Is this voir dire or is this cross?

THE COURT: Yes. Sustained.

It is not admissible at this point.

MR. PATTISON: May I have leave to further inquire into whether there was affirmation of it?

THE COURT: He said he never saw it.

MR. PATTISON: I know he said he never saw it.

THE COURT: How can he possibly say he knows about it? He knows whose handwriting it is.

MR. PATTISON: And was the subject matter ever talked about.

THE COURT: He said no. You can ask him.

Q Never?

A No, sir, we never discussed this matter.

THE COURT: On the basis of that, the objection must be sustained.

CROSS-EXAMINATION

BY MR. KATZBERG: (continued)

Q Mr. Dowd, there came a time, did there not, when you learned that an anonymous letter had been written to the controller of currency?

A Yes, sir

THE COURT: Is this new matter?

MR. KATZBERG: Yes, your Honor.

THE COURT: We will recess now for lunch.

(Luncheon recess taken.)

S:em

AFTERNOON SESSION

DAVID J. DOWD, having been previously duly sworn by the clerk of the Court, resumed the stand and testified further as follows:

(Jury present.)

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. KATZBERG (Cont'd):

Q Mr. Dowd, just as we were about to recess for lunch, I was beginning to ask you about the meeting with Mr. Langdon.

A Yes.

Q Now, do you recall that there came a time in February of '71, sir, that Mr. Langdon came to the bank to discuss an anonymous letter; is that correct?

A Yes, sir.

Q When for the first time did you learn that there was an anonymous letter sent to the controller's office?

A I think either that morning or perhaps at the time that Mr. Langdon was actually there.

Q In other words, before Mr. Langdon showed up you were not aware that the anonymous letter had been written?

A I don't believe so. It might have been the

day before, but no earlier than that.

Q All right. When you walked into the meeting with Mr. Langdon, did you know of the existence of the anonymous letter?

A Yes, sir.

Q You don't recall how long before that you read it, but it was only shortly before the meeting?

A Yes, sir.

Q More than a day before?

A A day before.

Q Whether it was a day, an hour, half a day?

A Yes, sir.

Q None the less, when you walked into that meeting you knew an anonymous letter had been written to the comptroller's office?

A Yes.

Q How did you know that?

A Mr. Clifford told me.

Q Was this conversation with Mr. Clifford in person or over the phone?

A Over the phone.

Q Did he call you?

A Yes.

Q Could you tell the ladies and gentlemen of the

jury what Mr. Clifford told you about the anonymous letter?

A He said he had received a call from Mr. Van Horn's office that an anonymous letter had been written and it related to political contributions. And Mr. Langdon was either there or was going to come in the following day--would be in shortly, and would I come in and attend the meeting.

Q Did Mr. Clifford say anything else at that time, that you might recall?

A I think that he mentioned it related to a loan -- the loan that the club had made -- about the money that the club had borrowed from Mr. Shea.

Q Did Mr. Clifford express any concern about the anonymous letter?

A He said that he was concerned that Mr. Shea -- about the allegations regarding Mr. Shea, something to that effect.

Q D id he express his concern as to the allegation of the contribution club itself?

A No, sir.

Q Did you say anything as to that after he told you that?

A I said, "Let me get the records and I will bring them in with me."

Q The records of the club?

A Yes.

Q Whom did you get the records of the club from?

A I believe Mr. Chadwick had them at that time.

Q Now, when for the first time did you learn that Mr. Powell was going to be present at the meeting?

A I think when I went in.

Q In other words, you had no previous knowledge that Mr. Powell was going to be present?

A No, sir.

Q You had no prior discussions with Mr. Powell abo ut the fact that Langdon was supposed to be there?

A No, sir.

Q Or the anonymous letter itself?

A No, sir.

Q Of course, you knew Mr. Langdon?

A Yes, sir.

Q Mr. Langdon was somebody that was an experienced senior national bank examiner; is that correct?

A Yes, sir.

Q He had a relationship by 1971 with the Security National Bank of a few years?

A Yes, sir.

Q And he was somebody well known to you; isn't that correct?

A I had known him for six or seven years.

Q When you, Mr. Langdon and Mr. Clifford met that day, you were no strangers to one another, were you?

A No, sir.

Q There was a previous existing relationship between all three of you?

A Yes, sir.

Q A previous relationship, right?

A Yes.

Q You were not friends, but youhad a business relationship, right?

A Yes, sir.

Q And you full well knew Mr. Langdon's duties and his responsib ilities?

A Yes, sir.

Q And why he was there?

A Yes, sir.

Q He was there to investigate, to find out whet her or not the allegations contained in the anonymous letter were true?

A Yes, sir.

Q Now, isn't it a fact when Mr. Langdon was

present, when all of you were assembled together -- withdrawn.

By the way, was this in Mr. Clifford's office?

A Yes.

Q There came a time when the four of you were there, you, Mr. Clifford, Mr. Powell and Mr. Langdon?

A Yes, sir.

Q Isn't it further true that the very first thing that Mr. Langdon did was to hand back a Xerox copy or a copy of the letter in question?

A I honestly thought when I came in that Mr. Clifford was reading the letter. I don't think Mr. Langdon handed out a copy. It must have started before I came in.

Q By the time you came to the meeting, Mr. Clifford was already reading the letter?

A I thought he had it in his hands.

Q And it was a copy of the letter, it wasn't the original?

A I think you are right.

Q I want you to look at Exhibit 171 in evidence and I want you to tell us, isn't it a fact that that is the letter in question, the anonymous letter?

A I believe so.

Q Now, isn't it further true that after Mr.

Clifford read the letter, for how long a period of time -- how long did Mr. Clifford have the letter?

A Five minutes.

Q After the five minutes elapsed, did there come a time when Mr. Clifford handed the letter to someone else?

A Yes.

Q Who was that?

A I think it was to me.

Q So you were the next one to read it?

A Yes, sir.

Q Did you read the letter?

A Yes, sir.

Q After you completed reading the letter, did you give it to Mr. Powell?

A Yes, sir.

Q Were you able to tell whether or not Mr. Powell had an opportunity to read the letter?

A Yes, sir.

Q So there came a time that Mr. Clifford, yourself, and Mr. Powell all read the letter; is that correct?

A Yes, sir.

Q Now, the letter and again for the record I am referring to Exhibit 171, says in paragraph two, does

it not:

"Officers of the bank reaching a certain salary level were given a supplemental raise, a couple of years ago, out of which they contribute" -- Is that correct?

A Yes, sir.

Q " -- $50 per pay, for 24 pays ($100 per month)"; is that right?

A Yes, sir.

Q And you read that part of the letter, didn't you, sir?

A Yes, sir.

Q Now, didn't there come a time when Mr. Langdon asked whether or not that allegation was true?

A No, sir, he never questioned whether officers got increases. Never raised it. Never raised the matter at the meeting.

Q Are you tell us, sir, that the very first allegation in the letter that we have just read, the one beginning in paragraph two, that Mr. Langdon never even asked about the salary raises?

MR. BANNIGAN: Objection; asked and answered.

A Yes, sir.

MR. BANNIGAN: He said "no."

THE WITNESS: No, he did not.

Q Did Mr. Langdon say anything at all?

A Yes, he said for some time these kickbacks were in cash. In other words, he was concerned -- the first thing I recall him talking about, you know, kickbacks and I believe Mr. Clifford said "Yes," that the officers had been contributing to a fund and that, I believe, it had been approved by counsel. I am not sure. I don't remember exactly what he said, but something to that effect. There was no discussion and there seemed to be no question in Mr. Langdon's mind as to the matter of the increases.

Q Isn't it a fact that Mr. Langdon went over each point in the anonymous letter one by one?

A I didn't have the letter when he went down it. I am saying the first thing he discussed was the matter of the officers' contribution club.

Q Never discussed the salary raises?

A Never discussed the salary raises.

Q So he didn't go over each point in the letter one by one?

MR. COHN: I object.

THE COURT: He did not say that. I will sustain the objection.

Q Isn't it a fact that there came a time when

Mr. Clifford told Mr. Langdon, with respect to that allegation about the salary raises, I was told that officers at the bank --

MR. COHN: I object.

MR. BANNIGAN: Objection.

MR. NAFTALIS: I ask to approach the bench.

THE COURT: Sustained.

Q Isn't it a fact that Mr. Clifford specifically told Mr. Langdon that no salary increases were given?

A Absolutely not.

Q Never happened?

A No, sir, absolutely not.

Q Did the subject of officers' salaries come up at all, sir?

MR. NAFTALIS: I object. This has been asked and answered. I think this is the fourth time.

THE COURT: I will allow him to answer it.

Q It did?

A Not that I recall, sir.

THE COURT: Not that he recalls.

Q Did you discuss at all with Mr. Langdon the source of the contributions, the officers were making?

A I don't think he asked the source of it. I think the inference was that they were contributing out of

their own pocket.

Q That's what Mr. Clifford told him?

A That is what I believe he did.

Q That the officers were contributing out of their own pockets; is that right, sir?

A Yes, sir.

Q Now, you read the anonymous letter which referred to salary raises; is that correct?

A Yes, sir.

Q Did you yourself bring up the subject of salary raises?

A No, sir.

Q You didn't think that was a concern to Mr. Langdon?

MR. COHN: Objection, your Honor.

THE COURT: Sustained.

Q Did the subject of reimbursement come up, sir?

A I don't know that the matter of reimbursement came up. I know that I wasn't concerned with the failure of Mr. Langdon to bring up the matter of the salary increases, because neither was Mr. De Genaro concerned about salary increases.

MR. KATZBERG: I move to strike the answer as not responsive.

THE COURT: Yes, strike it.

Q The question is, sir: Was there a discussion of reimbursement?

A No, sir, I don't believe so.

Q No question about that in your mind?

A No, sir.

Q Do you recall when Mr. Langdon asked about postage stamps?

A Right.

Q Remember that, sir?

A Yes, sir.

Q He asked whether or not the bank made contributions in postage stamps?

A No, I think he said: "Were postage stamps bought by the officers?"

Q Didn't ask whether or not the bank itself bought postage stamps?

A I don't think so.

Q What did Mr. Clifford say to that?

A I believe he said, "No," because I know he asked me and he asked Mr. Powell and I know that I said, no, they had not.

Q Were you aware at that time that Mr. Barrie had purchased postage stamps in 1966?

A No, sir, I wasn't.

Q You were not aware of that?

A No, sir.

Q Now, I want you to look at Exhibit 174 in evidence and I want you to look at this particular sentence starting with the words, "Mr. Clifford."

A Right.

(Continued on next page.)

Q And I asked you if that does not refresh your recollection that there was indeed a discussion of reimbursement?

A There is a sentence that Mr. Clifford said in no way were these officers reimbursed by the bank.

Q Does that refresh your recollection that there was indeed such a conversation?

A There could very well have been. I think if it is here, I am sure it was.

Q So now you remember there was a conversation --

A I don't recall it.

-- is that correct?

A No, I don't recall, but Mr. Langdon is quite accurate.

Q When you say that Mr. Langdon is quite accurate, would you tell us what you mean by that?

A Mr. Langdon is a very careful and accurate person.

Q He is the kind of person that when he is assigned to investigate a matter, would do so thoroughly?

A Yes, sir.

MR. NAFTALIS: Objection.

THE COURT: He has answered.

Q Is that correct?

A Yes.

Q You are saying Mr. Langdon omitted a discussion in the second paragraph about the salary increases?

A Mr. Langdon would have commented in his memo to the comptroller if that was the case.

Q The sentance that says "in no way" refreshes your recollection that that salary question was discussed?

A I am positive that the matter of salary increases were never discussed. Positive. Absolutely positive.

Q Did you tell Mr. Langdon --

THE COURT: That is his answer from here on. He is positive and that is it. No more questions.

MR. KATZBERG: At all?

THE COURT: As to that subject.

Q Now, the anonymous letter referred to the postage stamps, did it not, sir?

A Yes, sir.

Q And Mr. Langdon'sletter refers to the postage stamps, does it not sir?

A Yes.

Q He, meaning, Mr. Clifford, further stated that at no time had contributionsbeen made in the form of stamps?

A Right.

Q Mr. Langdon does not say that he was told at

no time did the contributors fund purchase the stamps?

MR. NAFTALIS: Your Honor, I object. That is a mischaracterization. Mr. Langdon testified --

MR. PATTISON: I object to that, Your Honor.

THE COURT: He may answer the question.

A That is what it says.

Q Does that refresh your recollection that Mr. Clifford told Mr. Langdon that at no time had the bank ever purchased postage stamps for contributions?

A No, sir.

I am of the opinion that he told -- I believe the discussion was regarding the officers fund and I believe that when Mr. Clifford -- I believe that when he said there were no contributions of stamps, at least I inferred it did not come out of the officers fund, because I immediately made a note to double check the records while I had them in front of me to see if there was and I hurriedly looked at them and I didn't see anything for postage stamps. I had not been aware that the bank had contributed postage stamps, so I had no other knowledge.

Q You had nothing to hide from Mr. Langdon?

A No, sir, not a bit.

Q And had he asked about the salary raises, would you have discussed them with him?

A Absolutely.

Q But you knew, didn't you, that the anonymous letter spoke about the salary raises?

A Yes, sir.

Q And yet you didn't volunteer --

MR. BANNIGAN: Objection.

THE COURT: Sustained.

MR. KATZBERG: May I have one moment, Your Honor?

THE COURT: Yes.

(Pause.)

Q Now, you said you brought a list with you of the officers that were contributing?

A I brought all the records that we had, as a matter of fact.I know I had the Betty Jaeger records, because it related tc all the expenditures of the monies that we received from Mr. Shea, but it was the complete records that the bank had. I believe I got them from Mr. Chadwick. There were all the records of the officers, the names, the amount they contributed, the month theycontributed, and all of the monies in and all the expenditu s out.

Q Did you bring with you the visi cards?

A The visi cards?

Q Yes.

A No, sir.

Q The cards that showed the raises?

A They are personnel records. I was asked to bring all the records, relating to the contributions.

Q In other words, you did not bring the records from the personnel department?

A No, sir.

Q Any of the records brought with you that day reflect salary increases for contributions?

A No, sir.

Q Did you bring the officer salary review forms with you?

A No, sir, just the records -- all the records of the contributions club. That was all the records of the monies and all the records of the monies paid out.

Q Do you remember that you told us before that part of the records of the contributions for the raises, a part for contributions and part for merit?

A No, I said they were personnel department records.

MR. COHN: Objection.

THE COURT: He is asking.

A I said they were personnel records. They were not part of the club. The club had nothing to do with salary increases or raises.

Q And you didn't bring those records either?

A No, sir.

Q Isn't it a fact that after meeting with Mr. Langdon you and Mr. Clifford and Mr. Dowd and Mr. Powell had your own meeting?

A I don't believe so. We could have stayed a few minutes afterwards. I am sure that Mr. Powell and I went out with Mr. Langdon -- left Mr. Clifford's office.

Q Did you ever discuss with Mr. Powell or Mr. Clifford the fact that Mr. Langdon had not discussed the salary raises on the anonymous letter?

MR. COHN: I thought that he answered that.

THE COURT: Sustained. He said he did not discuss it.

MR. KATZBERG: I am talking about after the meeting.

THE COURT: You asked why Mr. Langdon did not ask about the salaries?

MR. KATZBERG: I believe the question --

THE COURT: I sustained the objection. There is no basis for the question at all.

MR. KATZBERG: May we approach the bench, Your Honor?

THE COURT: Surely.

There is no basis for it in any event.

(The following transpired at the side bar.)

THE COURT: You are beating a dead horse.

MR. PATTISON: This witness testified that Mr. Langdon did not speak about one of the points made in the letter, which was the reason why he was there. What I believe we'd like to bring out now is whether or not that fact, the fact that he did not ask about that, was that ever the subject of any other discussion at any other time.

THE COURT: Absolutely improper. The objection is sustained.

(The following transpired in open court.)

Q Did there come a time when you spoke to Mr. Casey after the meeting with Mr. Langdon?

A I am sure that I spoke to him many times.

Q Wherein you discussed the meeting with Mr. Langdon?

A I would imagine I did. He was in charge of the contributions in 1971.

Q What did you tell Mr. Casey?

A I don't recall. I'm sure I reviewed what Mr. Langdon -- the substance of Mr. Langdon's request.

Q Told him that Mr. Langdon had been there?

A Yes, sir.

Q And that you discussed the matter with Mr. Langdon?

A Yes, sir.

Q Tell him that basically everything was okay?

A Yes, sir.

I think what I said to him was that Ifelt much better now because we have had the comptroller of currency out and he has reviewed the plan and he sees no reservations in it.

Q Mr. Langdon said he had no reservation?

A I felt he had none because he said something to the effect it was a better plan than most he had seen.

Q You recall Mr. Langdon saying that at the meeting?

A Either Mr. Clifford told me that he said that or I heard him say that.

Q Can you think back and tell us which one it was?

A No, sir, I really can't remember. I felt relieved that Mr. Langdon had been out and gone over it and I wasn't concerned about a violation of law, but certainly there are alot of regulations in the Comptroller's Department and to have their people come out and review it and be satisfied, made me feel better.

Q Mr. Langdon didn't know the entire program, did

he sir?

A No, sir, we didn't discuss raises with him.

Q So how could you say that Mr. Langdon approved the program?

MR. COHN:Judge, --

THE COURT: Yes, sustained. How would he know what Mr. Langdon knew. How could he know what somebody else knows. The question does not follow.

MR. KATZBERG: They didn't discuss it with him.

THE COURT: Ask him that. Do not ask him whether he knew what Mr. Langdon knew. It does not follow.

Q You felt that Mr. Langdon approved this; is that correct?

MR. COHN: Objection as to what he felt.

THE COURT: Yes.

Q You were told that by either Mr. Langdon or Mr. Clifford?

A Pardon?

Q You were told that Mr. Langdon approved this by either Mr. Langdon or Mr. Clifford?

A No, no, Mr. Langdon --

MR. COHN: He has answered the question.

THE COURT: No, he has a right to ask it.

THE WITNESS: Shall I answer?

THE COURT: Yes.

A Mr. Langdon and Mr. Clifford -- Mr. Langdon or Mr. Clifford repeated Mr. Langdon's remark that this was the best -- a better plan than any he had seen at any other bank.

Q So you approved it?

MR. BANNIGAN: Objection.

A I felt that he reviewed it and was satisfied. He didn't have any reservations apparently.

Q He also wasn't told about the raises --

MR. NAFTALIS: Objection, asked and answered.

THE COURT: Yes, you have been through that.

MR. KATZBERG: May I have an answer?

THE COURT: You have asked that question at least sixty times now. That is a lot of questions.

MR. KATZBERG: Could we have sixty-one, Your Honor?

THE COURT: I will let him answer it one more. This is the final question.

Answer the question.

THE WITNESS: I am sorry, could he repeat it once more?

THE COURT: Nothing about raises?

THE WITNESS: No discussion about raises.

THE COURT: That is what he said. That is all there is to it. There is no more.

Q Now, I want to show you some documents that are in evidence.

First we will start with Exhibit 115 in evidence. I want you to look at the very top page. Do you see your handwriting on there?

A Yes.

Q Could you read to us what you wrote on that page in your handwriting?

A "Per: RDY $3,000.00, not $5,000.00 DD to speak to Buzz.Only three or four go. Spoke to Buzz. $3,000 will be okay to cover invitations presently scheduled between now and years end."

Q You read the first thing, that is n ot your handwriting, is it?

A It is.

Q And that as well?

A And so is this.

Q Who is Buzz?

A Mr. Schweng, the fello that wrote the letter.

Q Who is he?

A Chairman of the Suffolk County Republican Committee.

Q And a commitment had been made to him, and that is what that wording is al ut; is that correct?

A No, sir, there was a request for $5,000.00 and approval by Mr. Johnson was for $3,000.00.

Q That is what you indicated here, that you spoke to Mr. Schweng, the one who made the request, and that $3,000.00 was okay with him?

A Yes, sir.

Q And so the contribution of $3,000.00 would be made, not $5,000.00; is that correct?

A Yes, sir.

Q By the way, do you recognize the handw_iting on the back?

A Yes, sir.

Q Whose is that?

A That is mine.

Q That is your handwriting?

A Yes,.

Q Would you please read to us what that says?

A Yes. This relates to a dinner --

THE COURT: Just read it.

A (continuing)"call each company chairman, get commitment by committee men for one hour per week at LIR Headquarters, calling on prospects.Paragraph 3 organize

a group within bank for ticket sale. Paragraph 4 calls on those letters already sent and inform secretary status of each. Paragraph 5 c.: vendors PR and Ad agencies."

Q When did you write that on the back of this?

A Probably within a week.

Q Does that relate to the events that you are talking about on the front?

A No, sir, this was a Long Island Association Dinner that was being given and I had this with me and when I went to the fund raising committee for the dinner, I made my notes on the back as to what I was supposed to do.

Q So those notes have no bearing as to the contribution?

A It says on the back "Long Island Association."

(continued next page).

Q That's the one Mr. Dutra came from?

A Yes.

Q Now, with respect to Exhibit 102, this is a routing slip on the top of you to Mr. Johnson; is that correct?

A Yes.

Q Dated August 29, 1972?

A Yes.

Q And that's a routing slip to convey which people should attend this dinner for Sol Wachteler; is that correct?

A Yes, I had made recommendations and Mr. Johnson selected those that he wished to attend and sent me back a routing slip indicating who was to go, which I passed on to Mr. Chadwick.

Q Did you tell Mr. Johnson that you didn't think it was appropriate to make that contribution to Mr. Wachteler's campaign?

A No,sir. I may have thought it, but I didn't say it.

Q And so you pursuant to that commitment made sure that there would be enough people to attend at -- the right people?

A No, sir. He was new at the bank. I was leaving

the bank. He asked me who do I think should go and I gave hima list of 13 people.

Q Pursuant to that contribution you suggested people to Mr. Johnson who should go?

A Yes, sir.

Q Now, did there come a time in early 1974, when you and Mr. Clifford had a conversation about the investigation of this case?

A Yes, sir.

Q And was that on the telephone or in person?

A Probably on the telephone.

Q Did you call Mr. Clifford or did he call you?

A I can't recall. I know that we had a discussion about it. I just can't recall.

Q And in that conversation, did Mr. Clifford express to you his concern over the investigation?

A No, I don't think so. In fact the sum of the conversation was that we had nothing to be concerned about.

Q At any time in that conversation, did you and Mr. Clifford discuss Mr. Chadwick's records?

A No, sir.

Q At no time?

A No, sir.

Q At any time during that conversation, did you

and Mr. Clifford discuss what records should or should not be destroyed?

A No sir, absolutely not -- absolutely not -- positively not.

Q Now, when for the first time did you learn of the investigation, sir?

A Probably when Mr. Casey -- when Mr. Casey came in and told me that the F.B.I. had come in to discuss this matter with him. Either that or it could have been in the Newsday Article, but it was in the Spring of 1974.

Q Now, did there come a time when you spoke to Mr. Dutra in 1974 about the investigation?

A I don't know whether it was about this investigation, but I know that Mr. Shea called me and said that Newsday had been running an article on the Security National Bank, that he felt it was derogatory to the bank, and I think he discussed with me that this was damaging -- this kind of statement, and did I give an interview to Newsday about it and I said "no, I didn't".

He said, "well, Mr. Dutra must have."

I said, "I really don't think he would."

He said, "where is he now?"

I said, "he is up in Rhode Island."

He said, "would you call him and ask him did he talk

to anyone at Newsday?" and I said, "I don't know that I have his number, but if you want I will call him for you."

Q Isn't it a fact that Mr. Dutra --

MR. COHN: At this point, since this was not gone into on direct examination, and I have no objection to counsel inquiring as to this subject, I would ask that he be restricted and not be permitted to use leading questions.

MR. KATZBERG: This is cross-examination.

MR. COHN: This was never brought out on direct examination.

THE COURT: You cannot cross-examine on something that he did not bring out on direct examination.

MR. COHN: I do not object to the inquiry, but I ask that he don't ask leading questions.

(The following transpired at the side bar.)

MR. PATTISON: This witness testified as he sits here now. He does not have any doubts about it. Mr. Cohn brought that out. We want to show that in 1974 he made false statements about the case, which I think is relevant and probative and it is a proper subject of cross-examination.

THE COURT: It wasnot gone into on direct examination. You can question him, but you cannot use

leading questions.

MR. PATTISON: But it is cross-examination.

THE COURT: Leading questions are not permitted on cross-examination.

MR. PATTISON: We are not making him our witness.

THE COURT: You cannot ask leading questions. There is no such rule that on cross-examination you have a right to ask leading questions. You find that rule for me. There is no such rule. I have permitted wide latitude, but there is no rule. Find it for me. I will give you a ten minute recess.

(The following transpired in open court.)

THE COURT: We will take a short recess, ladies and gentleman.

(Recess taken.)

(continued next page).

(The following occurred in the absence of the jury.)

gr/ss

2pml

A 2473

MR. KATZBERG: Your Honor, the Government requests to be able to cross-examine, normal cross-examination of this man on the subject of his conversation with Mr. Dutra about this news article, and I don't think that the fact --

THE COURT: About the news article?

MR. KATZBERG: Yes, Judge.

MR. PATTISON: Yes.

THE COURT: The way you examined him before?

MR. KATZBERG: No.

THE COURT: Which one are you talking about now?

MR. PATTISON: This is the one which prompted the phone call.

THE COURT: Wait. Let me see which that one is.

MR. PATTISON: In which Dutra is quoted.

MR. KATZBERG: I believe it's already been marked as a defense exhibit, but this is a copy of it, Judge.

THE COURT: Has it been shown on direct examination?

MR. KATZBERG: I don't believe so.

I don't believe he was shown it on direct examination.

A 2474

MR. PATTISON: Your Honor, cross-examination may not be limited by a lawyer by purposely not asking him about things.

THE COURT: I am not thinking that way. My impression of the matter was not what is being talked about in the news article.

The news article is talking about -- direct examination, though it was not touched, it would be permissible. I must rule that way. It would be permissible.

I was assuming something totally different from that.

MR. PATTISON: Just about the bank raises.

MR. KATZBERG: Could you give a limiting instruction to the jury, because I think you conveyed to them inadvertently the impression I was doing something wrong.

THE COURT: No, I did not say anything to them. No. I agree with you on that. I was thinking of something completely different.

MR. PATTISON: Your Honor, at this time --

THE COURT: News articles are not new because news articles were discussed on direct examination. Whether he discussed all of them is different.

I will allow it on those circumstances,

Mr. Cohn. A 2475

MR. COHN: Beg pardon?

THE COURT: I will allow leading questions on the basis of this news article.

MR. COHN: On the basis of the news article?

THE COURT: It really is not something that is new as compared to the direct examination because he was asked about whether or not he had discussed news articles.

MR.COHN: No, If your Honor pleases, there is nothing in here about Dowd in any of these articles, only a statement in here about Dutra in this article.

THE COURT: It is about whether or not he would have a right to ask him questions as to, number one, what he knew about him and, number two, what his state of mind was, whether or not he sought any advice.

MR. PATTISON: And what he told the man.

MR. KATZBERG: Quoted.

MR. PATTISON: The man quoted afterwards.

THE COURT: I will allow it. I think it is proper under the circumstances.

MR.COHN: Only on the basis of this article, is that right?

THE COURT: I was under the impression something else was going to be asked, and something else I would

not permit.

2476

MR. COHN: So was I, frankly, your Honor, at the time that I made the objection. I didn't know what they were going into.

THE COURT: The only reason for my previous statement is that. There is no other reason for the previous statement.

MR. COHN: Is this in evidence now?

MR. KATZBERG: No. This is my own copy from the grand jury, I believe.

MR. PATTISON: I believe it has been marked.

MR. KATZBERG: Marked for identification as a defense exhibit.

MR. PATTISON: Casey's cross, I believe.

MR. COHN: No.

MR. RYAN: FF. It's exhibit FF for identification.

MR. KATZBERG: It's already been marked.

Can I have the defense copy and I will use that instead?

THE COURT: Seat the jury.

THE WITNESS: Will I be able to look at it?

MR. PATTISON: Yes.

MR. COHN: May I inquire? Is that the same one?

All right, your Honor. Just so I will make the record clear, I was not aware they were going into a newspaper article that had already been discussed in the trial.

THE COURT: I wasn't either.

MR. PATTISON: Your Honor, one other point before they come in. Timing tomorrow. I wondered whether the Court has had the chance to ascertain the amount of calendar which you have?

THE COURT: We will check.

MR. PATTISON: Thank you.

THE COURT: I apologize, because I was under a different impression completely about a whole new matter.

MR. KATZBERG: I was afraid the jury got the impression I was doing something wrong.

THE COURT: I will tell them now.

THE CLERK: One-page document marked for identification as Government's Exhibit 189.

(So marked.)

MR. BANNIGAN: Your Honor, I don't want any reference -- it's not in evidence. The contents should not be discussed.

THE COURT: Yes.

(Jury present.)

A 2478 THE COURT: All right. I know that we had a discussion on side bar and it involves, as I told you originally, matters of law and also the question of the Court's ruling on various matters of law, particularly on rules of evidence that must come before it and it has nothing to do with the jury. You must understand that.

It's strictly a question between the lawyers and the Judge as to what the rulings should be and they have an absolute right to disagree with the Judge, if they feel that the ruling should be otherwise.

We have resolved the situation and we will now continue.

MR. KATZBERG: Thank you, your Honor.

THE COURT: That is for all sides. It's not limited to one side. That's all sides.

CROSS-EXAMINATION

BY MR. KATZBERG: (Continued.)

Q Mr. Dowd, isn't it a fact that the conversation that you had with Mr. Shea concerned Mr. Dutra being quoted in a news article?

A I think Mr. Shea asked did I speak to Newsday about an article.

Q The question is, isn't it a fact that you and

Mr. Shea discussed Mr. Dutra being quoted in a news article?

A He asked did I give an interview with Newsday and I said I hadn't. He said did Mr. Dutra. That's as I recall it.

Q You had no discussion with Mr. Shea as to the fact that Mr. Dutra had indeed made a statement to the newspapers?

A I think he asked did I, and I said no, and he said did Mr. Dutra. That's what I recall.

Q You have no recollection of discussing Dutra's being quoted?

A If you could let me recollect from looking at the article?

Q Sure. Let me show you Exhibit 189 for identification, which is the same --

MR. BANNIGAN: Your Honor, I'm going to approach the side bar on something that I brought up just before the jury came in. I'd like to approach the side bar on this.

(Side bar follows:)

MR. BANNIGAN: Just before the jury came in I said, your Honor -- I said I don't want anything referred to in that article at all. It's not in evidence and that's exactly what he has done. To show

that Mr. Dutra was quoted in the article.

MR. KATZBERG: It is being shown to refresh his recollection.

MR. BANNIGAN: I don't understand. The article is not in evidence.

MR. PATTISON: Not yet, but I think we can get it into evidence.

MR. COHN: Come on.

MR. PATTISON: Please.

MR. KATZBERG: It's only been shown to refresh his recollection. He asked to see it.

MR. BANNIGAN: There should have been no reference to the fact that he was quoted in the article.

MR. PATTISON: Because the telephone -- the phone call which occurred after the paper came out was the subject matter of what they talked about.

THE COURT: All right.

MR. PATTISON: At least those portions.

THE COURT: I will allow it.

MR. BANNIGAN: I want my objection to be noted because you made a ruling, your Honor, and -- you may try to explain it away, but you violated the ruling.

THE COURT: Who did?

MR. BANNIGAN: Mr. Katzberg by referring to what's in the article.

THE COURT: They will lay a foundation.

MR. PATTISON: The witness asked to see it.

MR. BANNIGAN: They should have laid a foundation before.

THE COURT: I know. All right.

(In open Court.)

THE COURT: All right.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

BY MR. KATZBERG:

Q Does that refresh your recollection, sir?

A Yes, it does, now.

Q Isn't it a fact that you and Mr. Shea discussed the fact that Mr. Dutra had made a comment to the newspapers and was quoted?

A Yes sir. I think what must have happened, Mr. Shea must have called me before I saw the article, so when he asked me did I speak to the newspaper, I didn't -- I thought he was actually inferrring that I had. I hadn't.

When he asked had Mr. Dutra, I did not know that there was an article that Mr. Dutra had been quoted in.

But as a result of the conversation, I called -- as a result of his request, I called Mr. Dutra in Rhode Island.

Q And had you read the article at that time, sir?

A No, I don't think so. No.

Q Isn't it a fact that you said to Mr. Dutra, in substance, what are you talking to the newspapers for?

MR. COHN: If your Honor please, the same admonition given to the jury, that just because Mr. Katzberg says it is a fact,they should not infer it is a fact?

THE COURT: The, understand. The question is never, ever evidence.

A (Continuing.) No sir.

Q What did you say to Mr. Dutra, sir?

A I said "Joe," I said, "Bill Shea called me on the telephone and he's very much concerned about an interview that he says that I gave to Newsday and he said he's thinking of taking some action against Newsday and he wanted to know did I give an interview to them and I said I didn't. He asked me if I called you to see whether you had spoken to Newsday. Did you?"

And Joe said, "Yes," he said, "I did." He said, "But I spoke very complimentary about the bank."

And I said, "Okay," and I said, "You know, fine."

I said, "I guess I don't think either of us want to hurt the bank," and then we talked about, I guess, what he's doing up there and that was the sum of it.

Q Did Mr. Dutra tell you what he in fact told the newspaper?

A I think he did.

Q What was that, sir?

A It sounded complimentary to me, too, what he said.

Q Can you tell us what it was?

A The details of what he said, I don't recall.

Q Well, looking at the article, does that refresh your recollection?

A The way he said it to me on the telephone, it sounded a lot better than it reads here.

Q I want you to look at the article and tell us whether or not that doesn't refresh your recollection as to what Mr. Dutra told you he told --

A Yes, I think in substance.

Q Go ahead. With your recollection refreshed, can you tell us what he said?

A I really don't recall, sir. I could read the article, if you want.

Q No, no. I think counsel would object.

A I see. I don't really recall, other than that he spoke to the -- he said he had spoken to Newsday in a favorable manner and he didn't -- the inference was he didn't know why Mr. Shea was upset.

Q Did Mr. Dutra tell you whether or not he told Newsday that -- did Mr. Dutra tell you at that time that he confirmed to Newsday that salary increases in fact were given?

A He could very well have, because that's quoted here.

Q And what did you say to that, sir?

A I didn't have any comments on it. I didn't disagree with anything that Mr. Dutra told me.

Q Isn't it a fact you told him that he shouldn't be saying those things in the papers?

A Absolutely not. Absolutely not.

In fact, I had no reservations about anything that was said here, no reservations.

As I look at it now, I don't see any reservations about it.

Q Now, Mr. Dowd, isn't it true that you spoke to Mr. Dutra on the telephone again, subsequent to that conversation?

A I know we've had a couple of telephone calls.

A 2485

I could have, yes.

Q Approximately in July of 1975?

A Oh, yes. Yes sir. Yes sir.

Q Now, you didn't work for the bank then; right? July of '75?

A Worked for Nassau Trust Company.

Q And Mr. Dutra wasn't working for the bank then, is that right?

A Yes sir.

Q Now, isn't it a fact that you spoke to Mr. Dutra at around the time of the Grand Jury appearance?

A Yes sir.

Q And how did you know that Mr. Dutra was going into the Grand Jury?

A Mr. Jesse Clemenko, a partner of the Shea firm, called me to tell me that I should be concerned about this investigation.

Prior to that, I honestly had no concern about it. I thought everything we had done was proper and legal and that there -- that they could investigate from now until doom's day, there was nothing wrong with anything we had done.

Mr. Clemenko called me out of the blue and said "Dave," he said, "I've got to tell you that this Grand Jury

is looking into this matter and I think that you should be concerned." He said, "I think you and Mr. Dutra should be concerned."

So I said, you know, "Why is that?" And he said because they're --

MR. COHN: Your Honor, can we approach the bench?

THE COURT: Yes. Do you want to approach or do you want me to sustain it at this point?

MR. COHN: Sustain the objection and I think Mr. Katzberg should receive some instructions from the Court.

MR. KATZBERG: Totally non-responsive answer, your Honor.

THE COURT: Yes, non-responsive. At this point let it stand, but any further statement, no.

Next question.

MR. NAFTALIS: Strike it.

MR. KATZBERG: I would have no objection to it being stricken, as Mr. Naftalis says.

THE COURT: You wish to strike?

MR. COHN: Strike it, your Honor.

THE COURT: Strike the answer as not responsive.

(Continued next page.)

A 2487

BY MR. KATZBERG:

Q The question is, when for the first time did you learn that Mr. Dutra was going into the Grand Jury in this matter?

A When Mr. Clemenko called me.

Q And Mr. Clemenko is the one who told you that; isn't that correct, sir?

A Yes, sir.

Q Thereafter, did you call up Mr. Dutra?

A Yes sir.

Q What did you say to him, sir?

A I said "Joe, Mr. -- I got a call from Jesse Clemenko, who is a partner of Bill Shea's, and he said that we should be concerned about this investigation and that he and I are going to be called to testify and that Mr. Clemenko suggested that I call, you know, you, Joe, to inform you this, and he said that he would suggest counsel for us."

(Continued next page.)

Q Did you discuss with Mr. Dutra was to say in the Grand Jury at that time?

A No sir. No sir.

Q No way?

A No sir.

Q Do you deny, sir, that you suggested to Mr. Dutra what he might or might not say?

A Absolutely not. Absolutely not. I would never do it.

Q Do you deny that there was any conversation between yourself and Mr. Dutra at this time about his Grand Jury testimony?

A Let me tell you what I told Mr. Dutra.

Q Mr. Dowd, the question is, do you deny that during that phone conversation in 1975, before Mr. Dutra's appearance in the Grand Jury, that you and he discussed his testimony in any manner, shape or form?

A The only method in which -- the only thing we discussed was --

THE COURT: That is not responsive. Did you or did you not?That is the question.

THE WITNESS: I can't answer it in that way, sir.

THE COURT: All right. He cannot answer it. That

is the answer.

Q Was there a discussion of his testimony?

A Yes, sir; only to the extent that I said "Joe tell it as it was. Tell the truth." I said, "I don't think either of us will get in trouble."

Q Do you deny that you told him anything about what he shouldbe saying?

A Absolutely, positively.

Q Now, I want to go back for a moment, take a brief moment to go back to the contributions.

Now, you told us that a lot of the contributions were for dinner tickets and journals and outings and other activities; is that correct?

A Yes, sir.

Q Isn't it a fact that a good portion or at least some portion of the contributions that were made were flat out contributions, having no connection with any dinner or outing or any activity?

A I'm sure there must -- there could have been -- must have been some in that category.

Q So there was no place that the bank had to be visible in those; is that correct?

A Oh, no. No, no.

If you were requested by Arthur Levitt to make a

contribution, Arthur Levitt, Jr., to make a contribution to somebody's campaign and it was valuable for you to be thought well of by everyone in the family, certainly that was an important consideration.

Q Oh, but there was no dinner to attend?

A No dinner, right.

Q And there was no place where the officers could pass out their cards in that circumstance; isn't that right?

A That's correct. All you got was the good will of the person requesting it and the good will of the recipients.

Q And that translated into potential municipal accounts; is that correct, sir?

A Hopefully.

MR. KATZBERG: May I have one moment, Your Honor?

THE COURT: Yes.

Q Just one more subject, Mr. Dowd.

Now, did there come times when you and others from the bank would go up to Albany for lobbying purposes in behalf of the bank, sir?

A Not for lobbying purposes, but we went up to make the rounds of the various state officials.

Q And you were making the rounds, did you go to

the people you contributed to?

A I don't think so. I mean, I -- it wasn't in that context. We went up, for instance, to visit the Treasurer of the State or the Comptroller, but -- or the -- not -- for instance, take the Comptroller's office, we didn't really go up to visit Arthur Levitt. We went up to visit personnel in his department.

MR. COHN: Your Honor --

Q Did you speak to people to whom you had given contributions or their organizations?

A Their organizations?

Q Yes.

A Well, if you went up to call on -- on some body in the State Treasurer's Department, that's who you called on.

We didn't give any contributions to the State Treasurer's Department.

If he was a Republican, yes, we had given money to the State Republican Organization.

Q Did you discuss with these people in these conversations the contributions that you had made to either their campaign or their party?

A No, that wasn't appropriate.

Q You never discussed that whatsoever?

A That's not appropriate, no sir.

Q Never mentioned that in any way?

MR. BANNIGAN: Objection. He's answered it. He said "no" twice.

THE COURT: All right.

MR. BANNIGAN: Three times.

Q What were the criteria that you used for choosing to visit one official vs. another?

MR. COHN: If Your Honor please, can we have a ruling that it was not illegal for a citizen of the State of New York to go and call upon a public official in the State of New York?

MR. KATZBERG: I'm not saying it is.

THE COURT: There is no illegality whatsoever. All right.

A (continuing) it would be the --what we tried to do is identify those fellows that could give us a hand in terms of letting us develop additional bank business, and they generally were not the people that you are talking about. These were people who were down the line, the assistant comptroller who was, let's say, responsible for seeing that the cigarette taxes were collected properly, and you would go in and talk to him, ask how the service he was getting from his other bank, talk about how you could

do it alot better and give him sixty reasons, hopefully, why it was better to do, buy him lunch, make a friend out of him and hopefully that if he became disatisfied with the other bank, he would think of you.

That's what the -- our visits were about.

Q We've already established that you had no services that other banks didn't have in that regard?

A Sir, I told you I think that our services were considerably better than the other banks, and I tell you that the business that we got was because our services were better and not because we bought tickets to organizations.

Q So there was no purpose in buying tickets?

A No, sir.

MR. NAPTALIS: Objection. It's an argumentative question and has been asked about five times.

THE COURT: All right. He has answered it.

MR. KATZBERG: I have nothing further, Your Honor.

RECROSS EXAMINATION BY

MR. RYAN:

Q Mr. Dowd, let me ask you about the bulletin in the Long Island Public Affairs. Was the Long Island Public Affairs Club some secret organization in the bank

conducted to violate the Corrupt Practices Act?

A No, sir.

Q Was it formed to make some cosmetic change, to make everything look proper when you knew that it wasn'

A No, sir.

Q And this bulletin that's before you, you recall I gave that to theprosecutor during the examinatio

A Yes.

Q Exhibit 188?

A Right.

Q Was there a procedure at the bank where a bulletin would be posted for all the officers and employe to look at?

A The bulletin went to every officer in the bank, and individual copy too, and then was posted in th lunch room of every office of the bank. It was public information for anyone and every one in the bank.

Q Do you recognize that document as one of th bulletins issued in the regular course of the bank's bus iness?

A Yes. I remember it well.

MR. RYAN: I offer it in evidence.

MR. BANNIGAN: No objection.

MR. NAFTALIS:NO objection.

MR. PATTISON: We do not object, Your

THE COURT: All right, mark it.

THECLERK: Government Exhibit 188 rec
evidence.

(so marked.)

MR. RYAN: I'd like to read it to the
I may?

THE COURT: Yes.

MR. RYAN: Ladies and gentlemen of th
this is Exhibit 188. On the top of it it h
and Operations. On the left you will see t
insignia for the Security National Bank, t
Light House. On the top it says, "Bulletin

The next line it says "Comptroller's
and the next line it has number 20, date 4
and there are four items of news on the Bu

The third underlined reads: "Long Is
Public Affairs Club," and it reads as foll

"It is the opinion of Management tha
officers and employees should be active i
party of their choice. A group of officer
been formed and form the Long Island Publ
Club which will encourage and coordinate
tion in public affairs. Corporations incl

are prohibited from making contributions to political parties. The club, which has limited resources, will make some contributions. Please refer any such request directed the bank to Joseph F. Dutra, Marketing Division for consideration."

I have no further questions.

THE COURT: Mr. Cohn.

REDIRECT EXAMINATION

BY MR. COHN:

MR. COHN: Mr. Katzberg, can I have those exhibits?

Q Mr. Dowd, you told us, as I recall, that Mr. Langdon was a very careful man?

A Yes sir.

Q Very prudent man?

A Yes sir.

Q Very accurate man?

A Yes sir.

Q And he was a bank examiner?

A Yes sir.

Q Went through records?

A Right.

Q Very careful what he examined?

A Yes sir.

Q Very careful in what he said?

A Yes.

Q Now take a look at a Government Exhibit 174. Do you recognize this to be Mr. Langdon's written report to his boss, Mr. Van Horn?

A Yes, sir.

Q Now, take your time and read the report and find for me in that report what this careful, prudent man told his boss about salary raises?

When you find the words, will you call it to my attention? I want you to read it to the jury.

A There is nothing in here.

Q There isn't a word about salary raises in the two page letter; isn't that right?

A That's right, sir.

Q Do you recognize this as having been shown to you by Mr. Katzberg as Mr. Langdon's offidal report to the Government on his interview with Mr. Clifford; is that right?

A Yes sir.

MR. COHN: Your Honor, I need some exhibits that were shown to the witness yesterday by Mr. Katzberg. He tells me he has them upstairs. Can I ask at least Mr. Pattison be permitted to leave

the court room to get the exhibits?

MR. PATTISON: Please, be it which ones?

MR. COHN: 1966, the two letters.

MR. KATZBERG: If I could be excused for two minutes?

THE COURT: All right.

MR. KATZBERG: I know what he's talking about, Your Honor.

Just those two?

MR. COHN: Should I go ahead while Mr. Pattison is here? So we don't waste any time?

MR. KATZBERG: Just those two?

MR. COHN: Just those two.

MR. KATZBERG: Fine.

(Mr. Katzberg leaves court room.)

BY MR. COHN:

Q Now, you remember Mr. Katzberg asked you a line of questions as to your conversation with Mr. DeGennaro after the Wall Street Journal article and the conversations in July or August of 1970, and so that we can pinpoint this down, the conversation with Mr. DeGennaro told you he wanted the checks made directly by the officers rather than paid to the Long Island Public Affairs or the Betty Jaeger Fund?

A Yes, sir.

Q Do you remember that conversation?

A Yes sir.

Q Were you asked the question as to whether that created some doubt in your mind as to legality of the prior system?

A Yes sir.

Q Did Mr. DeGennaro in that conversation ever tell you that the reason why he suggested a change of the officers checks is because he had any doubt as to the legalityof the prior system?

A No sir. In fact, he told me the opposite, that I had --that the Wall Street article had nothing to do with it and that there was nothing -- no question of legality in his suggestion of this change.

Q And that's what you told us on your direct examination; isn't that right, sir?

A Yes, sir.

Q Now, do you also recall the conversations -- I'm sorry -- the questioning that Mr. Katzberg put you to -- to you about the difference between salary increase and a bonus? Do you recall his questions on that?

A Yes sir.

Q Now, will you tell the jury what you under-

stand a salary increase to be?

A Salary increase is a permanent increase in the fellow's compensation.

Q What do you understand a bonus to be?

A A bonus is a payment that has to be renewed, if it's ever going to be paid again. It's a one shot payment of funds.

Q A bonus is a one shot operation?

A Right.

Q And a salary increase is something that continues?

A Yes sir.

Q Now, do you recall Mr. Katzberg's questioning of you on cross-examination as to what happens when an officer does not make the $1200 payment or the $100 per month payment? Do you remember that line of questioning on cross-examination?

A Yes sir.

Q Do you recall when Mr. Vandermark was on the witness stand?

A Yes sir.

Q Do you recall it was elicited from Mr. Vandermark --

MR. PATTISON: I object to this, Your Honor,

on the same grounds.

THE COURT: Yes.

MR. PATTISON: Been raised, many many times.

THE COURT: Ask the question.

Q Forget his conversation. Do you know that there were times when Mr. Vandermark did not contribute the $1200 a year to the fund?

A Yes sir. That's what he testified.

MR. COHN: Do you have any objection if I show my copy of the visi card?

MR. PATTISON: No.

Q By the way, was Mr. Vandermark ever fired because of that?

A No sir.

Q Did he have his salary reduced because of that?

A No sir.

Q Was he ever demoted because of that?

A He was promoted.

Q Take a look at Mr. Vandermark's visi card. Do you recognize this to be Mr. Vandermark's visi card?

A Yes sir.

Q What was his salary on November 6, 1967?

A $25,000.00

Q What was his position in the bank?

A Administrative Vice-President.

Q Get a $1700 raise?

A Yes sir.

Q When?

A On November 27, 1967.

Q That $1700 raise contemplated $1200 in contributions and $500.00 for income tax; is that right?

A Yes sir.

Q He didn't make the $1200 contributions, did he?

A No sir.

Q What happened after he got the $1700 raise? What happened to him on January 8, 1968, two months later?

A That's just the same.

Q The same salary, all right.

Now, read to the jury the history of Mr. Vandermark from his visi card with regard to job promotions and changes of salary and give us the dates.

A He went from $26,700 on January -- on November 27, 1967 to $30,000 on January 6, 1969.

Q He got a raise?

A Yes sir.

Q Go ahead.

A $34,000 on January 5, 1970.

Q What happened to him on December 18, 1969?

A That was his promotion.

Q What was he promoted to?

A To Senior Vice-President.

Q Then what happened to him after that?

A Then on July 6, 1970, he was -- salary increased to $36,700.00.

Q Then what happened after that?

A January 4, 1971, his salary was increased to $39,700.00.

Q After that?

A January 3, 1972 -- I'm sorry July 3, 1972, to $43,000, and then on July 30, 1973, to $46,000.00.

Q As a matter of fact, Mr. Vandermark is still with the Chemical Bank; isn't that right?

A Yes. sir.

Q As successor to the Security National Bank?

A Yes sir.

Q Never got fired?

A No sir.

Q And his salary went from $25,000 when he first got the $1700 raise to $46,000; is that right?

A I believe it was over $50,000 before he joined the Chemical.

Q But this now only goes to $73? is that right?

A Yes sir.

Q We don't have records for what happened after that?

By the way you were asked questions by Mr. Katzberg concerning visi cards?

A Yes sir.

Q Now, you showed us on this chart that you were involved with the banking division; is that correct?

A Yes sir.

(continued next page)

HS:TR
3/1 pm

Q Is personnel any part of the banking division?

A No, sir.

Q Visi cards ever kept under your jurisdiction?

A No, they were kept strictly in the personnel department by the personnel manager.

Q Were you ever concerned with these visi cards?

A I would have no occasion. If I needed information, I would call personnel.

If I needed the officer's summary review form, I could get a copy. We never had access to these and did not use them in our every-day functions.

Q Mr. Dowd, I show you Government's Exhibit 185, a copy of a letter that I gave Mr. Katzberg yesterday.

A Yes.

Q Will you look at it, sir?

(Document shown to witness.)

A Yes.

Q By the way, there is no question that this is a letter that you sent; is that correct?

A That is my letter.

MR. COHN: May I read this to the Jury?

THE COURT: Yes.

MR. COHN: Ladies and gentlemen, this letter was offered into evidence yesterday. It is a copy of

a letter dated October 11, 1966. It is addressed to "Wallace Nathan, Esq., Office of the Controller of the Currency, United States Treasury, 33 Liberty Street, New York, New York:

"Dear Mr. Nathan:

"We have received a request for a loan from a regularly organized political committee of one of the major political parties. We are informed by them that the purpose of this loan would be for normal administrative expenses and not for the conduct of any specific election. We understand from our conversation with our counsel, "Toaz, Buck, Myers, Brower, Bernst * Meservey, that under Rule 7740 such an advance by us would not be prohibited under the permanent Federal statutes. It would be much appreciated if you would, accordingly, confirm this to us.

"Very truly yours, David J. Dowd, Senior Vice President." With a copy going to Lewis H. Buck of the Toaz firm.

Q You sent this to a lawer for a legal opinion or did you send it to a governmental agency?

A To a governmental agency.

Q How come you sent this to the office of the Controller of Currency of the United States Treasury Department?

A The lawfirm at that time, Toaz & Buck, left there there were a lot of strict regulations regarding making of loans and they were not sure themselves as to the legality of making this type of a loan and they asked me would I write to the Controller of Currency for his opinion.

Q And you followed the lawyer's advice and did that; is that correct?

A Yes, sir.

Q Now, is there any reference to Section 610 in this letter, sir?

A No sir.

Q And this letter concerns itself with political loans; is that correct?

A Yes sir.

Q In 1966 were you involved with political contributions?

A No, sir.

Q Then was a response received from the Treasury Department?

A Yes sir.

Q And I show you Government's Exhibit 184 in evidence. Is this the letter that you received in response?

(Document shown to witness.)

A Yes sir.

MR. COHN: May I read this to the jury?

THE COURT: Yes.

MR. COHN: Ladies and gentlemen, again I will hold this up so you can see it.

On the top: "The Regional Administrator of National Banks, Second National Bank Region, 33 Liberty Street, Room 520, New York, New York, dated October 18, 1966, addressed to Mr. David J. Dowd, Senior Vice President, Security National Bank of Long Island, Huntington, New York.

"Dear Mr. Dowd:

"This is in reply to your letter of October 11, 1966 inquiring as to whether Security National Bank of Long Island, Huntington, New York, May make a loan to a regularly organized political committee of one of the major political parties without violating the provisions of 18 United States Code 610. You state that the loan would be for 'normal administrative expenses and not for the conduct of any specific election.'

"As was suggested in our telephone conversation last week, the question of such a loan being in violation of 18 United States Code 610 might be avoided by way of obtaining a statement of purpose of

the committee to the effect that the loan proceeds were to be used for 'general administrative expenses and not in connection with any primary election or political convention or caucus held to select candidates for any political office.'

"Very truly yours, Wallace S. Nathan, Retional Counsel."

Q In this letter a Government officer told you that there was a way to avoid a loan being a violation of Section 610, did he not?

A Yes, sir.

Q And he told you to avoid the violation by getting a statement from a political party with respect to the purpose of the loan?

MR. PATTISON: Objection, your Honor.

MR. COHN: Withdrawn.

Q Did anybody in the Shea firm ever instruct you or suggest that you write a letter to the Treasury Department?

A No sir, but if they did I would have.

Q Mr. Dowd, the controller of currency was involved -- withdrawn.

What was the function of the controller of currency with regard to the supervision of making of all

kinds of loans by National Banks?

A They were our boss in terms of making sure that we complied with the controller's regulations, in terms of the type of loans that we could make and the way we could conduct the affairs of the bank.

Q Did they regularly order the loan portfolios of the bank?

A Yes.

Q For commercial loans?

A Yes.

Q Individual loans?

A Yes.

Q Loans to political entities?

A Yes.

Q Do you know whether or not they had any service where they order political centributions by employees or officers of banks?

A No, I do not think they ever have.

MR. COHN: I may be finished.

May I just check my notes?

(Pause.)

Q You told us about the Long Island Association. Is that a politi-l organization?

A No sir, that is a Chamber of Commerce on Long

Island.

Q That is when Mr. Katzberg had you read off the back of that paper?

A WE run an annual dinner and they asked various officers and members if we would participate in assisting them in selling tickets to that dinner.

Q The reference to the Committees at back of that paper, that you read to the jury, was that the Committees of the Long Island Association?

A Yes, sir.

Q Did that pass through Mr. Schwang?

A No sir.

Q Anything to do with the Suffolk County Republican Committee?

MR. KATZBERG: We have gone through that, that it was unrelated.

THE COURT: Yes.

Q You were asked by Mr. Katzberg about a conversation you had with Mr. Johnson and at the time you had that conversation, who was Mr. Johnson?

A He was president of the bank.

Q Was he your boss?

A Yes.

Q When a president of a bank committs $2500

to a political committee, do you tell him he is crazy and he should not do it?

A No, sir.

MR. KATZBERG: Objection.

MR. COHN: I have no further questions.

THE COURT: Any other questions by anyone?

MR. PATTISON: I have just a few.

RECROSS EXAMINATION

BY MR. PATTISON:

Q Mr. Vandermark you were shown his card; is that correct?

A Yes, sir.

Q A copy of his card concerning raises?

A Yes, sir.

Q From Exhibit number 89 I want to show you that man's tally sheet as it were. You understand that to be the record of what he paid during the years 1971 and 1972; is that right?

A 1971, 1972.

Q What did he pay during that year?

A This shows two years -- you have totals of $1200 for each year.

Q What about 1973, sir, do you know what he paid?

MR. COHN: He wasn't at the bank.

MR. PATTISON: I am asking whether he knows.

Q Do you know?

A If you give me the records, I am sure I could figure it out.

MR. PATTISON: I do not have the records.

THE WITNESS: No, sir.

Q Do you know what happened to 1963 records?

A No, sir.

Q Sir, isn't it a fact that this man was approximately $200 short during one of those years prior to 1971?

A Sir, the only testimony I heard he contributed $900 out of $1200. That is the only thing I have heard.

Q That is in one year?

A That's all I heard.

Q Do you have the records of the Jager Club concerning officers tally list?

MR. COHN: You have got the records.

MR. PATTISON: We do not.

MR. COHN: I object. If they have the records, let them produce them.

MR. PATTISON: We do not.

MR. COHN: We do not have them either.

THE COURT: He does not have them either.

Do you have them?

THE WITNESS: No.

Q Mr. Cohn also showed you a letter which you received from Mr. Nathan; is that right?

A Yes.

Q Relative to a loan?

A Yes, sir.

Q The letter also indicates that you had called their office prior?

A Yes.

Q Right?

A Yes.

Q And that this was even after the lawfirm had approved making the loan?

A No sir, they said subject to the letter from the Regional Controller.

I know that is what the letter says. I'm telling you that their approval was subject to getting this.

MR. PATTISON: Move to strike.

THE COURT: Yes.

Q Didn't you tell Mr. Nathan in your first letter that counsel had approved making the loan?

A No sir. I told Mr. Nathan -- may I explain?

THE COURT: Just look at the letter.

Q Would you read it, sir? Read it out loud.

A "We have received a request for a loan from a regularly organized political committee of one of the major political parties. We are informed by them that the purpose of this loan would be for normal administrative expenses and not for the conduct of any specific election. We understand from our conversation with our counsel, Toaz, Buck, Myers, Brower, Bernst & Meservy that under Rule 7740 such an advance by us would not be prohibited under the Permanent Federal Statutes. It would be much appreciated if you would, accordingly, confirm this to us."

Q Does it say there, sir, that the lawfirm isn't quite sure and would like them to check?

MR. COHN: The letter speaks for itself.

THE COURT: Yes, it speaks for itself.

Q In your phone call -- by the way, when did you make that phone call, prior to or after writing the letter?

A Prior to writing the letter.

Q Prior?

A Yes, sir.

Q Did you talk to Mr. Nathan?

A Mr. Nathan.

Q Did you tell him that your counsel wasn't sure?

A Yes, sir.

Q You did.

Then you wrote the letter?

A I said that our counsel would like to get confirmation from you, Mr. Nathan, that we can make these loans. They understand that we can, is that so?

He said "Yes, write me a letter and I will answer it."

Q So it hadn't been approved by the lawfirm prior to the phone call and prior to the letter?

A Subject to that controller's letter.

Q One further thing:

Mr. Cohn asked you to read Mr. Langdon's report --

A Yes, sir.

Q -- and try to find the word "raise" in there?

A Yes sir.

Q Mr. Langdon didn't write the word "raise" in here?

A He wrote "raise $15,000" but there is no word "raises".

Q Raises for bankers?

A Yes.

Q Isn't it a fact, sir, that the subject of raises, according to you, never came up?

A The subject of raises absolutely never came up.

Q And he was never told that raises were in fact offered?

MR. BANNIGAN: Your Honor, I object to it. Objection.

MR. COHN: Objection.

MR. RYAN: That is 61.

THE COURT: Sustained.

MR. PATTISON: I have nothing further.

MR. COHN: The defendant David Dowd rests.

THE COURT: You may step down.

MR. RYAN: Your Honor, the defendant Frank Powell would like to proceed.

MR. HAFTALLIS: Before you proceed, I have one open matter. Mr. Clifford rested subject to a stipulation as to a particular witness. Mr. Pattison and I have agreed upon a stipulation. I would like to read it and then Mr. Clifford formally rests.

(Cont'd on next page.)

THE WITNESS: Frank Bebe Powell.

DIRECT EXAMINATION BY

MR. RYAN:

Q Mr. Powell, you have entered a plea of not guilty in thiscase?

A That's correct.

Q Did you ever have any agreement with anybody to cause unlawful contributions to be made on behalf of the Security National Bank?

A Absolutely not.

Q Did you have anything to do with any contributions to violate any law when you were at the Security National Bank?

A Absolutely not.

Q Did you ever hear, prior to the filing of the indictment, of Section 610 of the Corrupt Practices Act?

A No, sir.

Q Did you ever have any agreement with anybody to embezzle or misapply or unlawfully use monies in violation of the bank embezzlement statute in your life?

A Never.

Q When were you born, Mr. Powell?

A April 18th, 1907.

Q You are now 69 years of age, as of last Easter Sunday?

A That is correct.

Q How long have you been in the banking business in your 69 years?

A Since 1924.

Q Have you ever been accused of any wrong doing in connection with any banking business in your entire life?

A Absolutely not.

Q Is this indictment the first accusation of any wrongdoing of any kind in yourentire life?

A It is.

Q Are you guilty of these charges, sir?

A Absolutely not.

Q I want you to tell us truthfully, Mr. Powell, where you were born and take us briefly through high school?

A I was born in Bayshore and moved to Amityville about three days after my birth and have been a resident of Amityville ever since I think the 69th year was of yesterday a full time resident of Amityville.

Q And you went to high school in Amityville?

A I did.

Q Did you get a job after high school?

A Yes, I joined the staff of the Bank of America in New York City for a period of one year.

Q What was your position there?

A Clerical.

Q After that, what did you do?

A I then joined the staff of the First National Bank of Amityville as a clerk-bookkeeper and proceeded to do just about every job in the bank. It was a small bank of about four million dollars. I shoveled snow on the sidewalk, I picked up the mail, opened the windows about 6:30 in the morning. There was no air-conditioning. I did all the jobs throughout the bank from the bottom to the top. I became an assistant cashier approximately 1933. I became cashier of the bank after my return from military service. I later became Vice-President and eventually a director of the bank.

Q That's First National Bank and Trust Company of Amityville?

A Yes, and that period lasted until 1954.

Q Let me stop you for a second.

How many years did it take you from becoming a clerk bookkeeper to the status of an officer of the bank?

A Seven or eight years.

Q Did you tell us that that seven or eight years was interrupted by service in the war?

A That came later.

Q Now, after you became an officer of the bank, do you recall your title at that time?

A Assistant Cashier.

Q And at that time were you involved in that function of banking of attracting accounts or were you involved in lending or the operationsof the bank?

A I was strictly an operations officer, had charge of the complete operations of the bank.

Q Tell us what happened after you became an officer of the First National Bank of Amityville?

A Well, in 1942, war was declared and in August of that year I joined the Armed Forces as a First Lieutenant in connection with the formation of a new amphibuous command which the joint chief of staff had decided upon was very necessary if the United States would recapture the various islands in the Pacific that the Japanese had occupied in the first few months.

Q Did you have anything to do with the occupatio of the islands that the Japanese controlled during the war?

A Yes, I did. I spent approximately two years in the southwest pacific area. I served in the Asiatic-Pacific Theatre, the Bismark Archipelago, New Guinea, northern Phillipines, southern Phillipines and a number of less known islands.

Q Did you contract any disease that in any way affected your ability to speak?

A Yes, I did.

Shortly after I arrived overseas I contacted a very serious disease. It was known as Dinkgy Fever. I was confined for about three months in a jungle hospital and the results of it have left me with impaired vocal chords which at times affect --

Q That is all right. Now, there came a time when you completed your service in the war?

A That is right, January of 1946.

Q What did you do when you returned home from the war?

A After a period of time with my wife I went back to the staff of the First National Bank and was subsequently designated cashier.

Q What year was that, sir?

A Approximately 1950.

Q Now, did you advance in any way in the First National Bank of Amityville thereafter?

A Yes, I became Vice-President of thebank and was appointed a director and I continued to have charge of the complete operations of the bank.

Q Now, did any changes occur in your banking career after you became vice-president and director of that bank?

A Yes, in 1954, while it was known as the Security National Bank, later on in years, got together with the First National Bank and we created a merger. I was asked by the President of the Security National Bank to move to their headquarters and become the Comptroller of that bank which had very ambitious plans for acquiring other institutions. When we got togetherthe bank was approximately thirty million dollars in size.

Q Where was it located in Huntington?

A That was their headquarters.

Q Was it now known as the Security National Bank?

A At that time it had the name First Suffolk National Bank.

Q Later it became known as the Security National Bank?

A Yes.

Q In what year was that, sir?

A That would be about 1956. When I got to the bank a smaller bank in Riverhead had instituted some court action because of some similarity in the names, and my first task was to work with the attorneys in connection with that litigation.

Q What was the net result?

A The net result that we called the bank the Security National Bank and it was much better because First Suffolk National Bank wasa little bit of a tongue twister.

Q So that's 1956, correct?

A Right.

Q Let us take you to the years to 1960. In 1960 what was your position at the Security National Bank?

A I think Senior Vice President and Comptroller and we had already acquired a number of banks through merger and acquisition and that was my title and responsibility.

Q The operations of the bank?

A Absolutely.

Q Now let me take you from 1960 to the beginning of 1966.

At the beginning of 1966, who wasthe president of the Security National Bank?

A Mr. Herman Maass was the president and Chairman of the Board, Chief Executive Officer also.

Q What was your position at the bank in the beginning of 1966?

A In 1965 I had been designated Executive Vice-President and Comptroller.

Q Now there came a time, did there not, when Mr.

Clifford joined the Security National Bank?

A That is correct.

Q When was that?

A About February, 1966.

Q And there came a time after Mr. Clifford joined the bank that several other officers joined the bank?

A That's correct.

Q How about Mr. Dowd, do you recall that?

A Mr. Doud came in a weak or two after Mr. Clifford.

Q There were some others, Roger Loo?

A There were number of officers that joined the staff at the bank.

Q Now in 1966, you were not a Director of the Security National Bank; is that right?

A I was not.

Q Did you become aware that the directors had a fund for purchasing tickets to political dinners?

A Yes.

Q Tell us how you learned about that?

A I believe it was March of 1967--1966--I take that back, March of 1967. I was contacted and asked if Iwould be willing to make a contribution of $100.00 to-

ward the purchase of tickets.

Q Who asked you?

A I believe it was Mr. Herman Maass.

Q Did you contribute $100.00?

A Yes, I did.

Q How did you do it?

A By check payable to Pauline Reddy Special Account, I think, it was #D.

Q In all of your prior experience at the bank, as you have related it to us, did you recall them ever having a fund for the purpose of purchasing tickets?

A No, I do not.

Q This was the first time that you recall that the bank had a fund for the purchase of tickets?

A That's when I first learned it.

(continued next page)

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Q There came a time, did there not, there was a Betty Jaeger Fund established at the bank?

A That's correct.

Q I would like you to explain to us how it came about, to your knowledge, that the Betty Jeager Fund was established? In your own words, Mr. Powell?

A Approximately October, 1967, Mr. Dowd came into my office and asked if he could have a few words with me. Mr. Dowd advised me that the officers who had been making contributions to a fund out of their director fees --

Q Do you mean directors or officers?

A Directors.

Q Okay.

A Out of their directors' fees had decided to discontinue that program. Mr. Dowd said that the advisibi ty of the bank had been good as a result of the bank's participation and the bank had been successful, particularly in its competition with other financial institutions, and he felt that the bank would have to have some other means of continuing that participation.

Mr. Dowd told me that the bank proposed to ask some of the senior officers to make similar contributions. I told Mr. Dowd that I felt that I could afford to do it, but that I did not believe there were many other officers that had

sufficient mea[illegible] do so.

Mr. Dowd then told me that he proposed to ask other officers if they would be willing to volunteer to make contributions, at which time they would receive an adjustment in salary, which would be sufficient to take care of those contributions.

I asked Mr. Dowd immediately if that was a proper program. He assured me that he had done some research, and that it had approval of counsel.

Q Do you recall anything else at this meeting?

A Mr. Dowd -- I believe at that time Mr. Dowd had a list of names or roster of bank officers and preliminarily wanted, I believe, to just go over some of those names with me and see what I thought.

There were some names on there that I objected to. There were one or two officers that had not been performing at a satisfactory standard, in my opinion, and I would not like to see them receive any adjustment for that reason.

There were also one or two other officers, one I think was about to retire, and I forget another reason, but there were three or four officers on that list that I objected to.

I think I also mentioned to Mr. Dowd prior to going over the list of names that perhaps at the time the annual salary reviews came up, which would have been in one or two

months, that this might enable some of the people to make those contributions. But it was apparent to me that it was rather urgent to get this program under way, as soon as possible.

Q Do you recall anything else discussed?

A Well, Mr. Dowd asked me if I would be willing to handle the funds. I told Mr. Dowd that I was entirely too busy. I worked from -- on an average of from seven, seven-thirty in the morning till eight at night.

It was a very big and active bank and growing and I had no time for that time of detail.

Mr. Dowd then asked me if I thought Mrs. Jaeger, who was an officer of the bank and also an assistant and part-time secretary to me, if she might be willing to do it. I said I didn't know, but I would ask her.

Q Do you recall anything else that you and Mr. Dowd discussed?

A No. I think we talked generally about it, that it had to be a voluntary program. It was up to the officers to make that decision. There couldn't be any coercion, and it was strictly up to them.

Q After that discussion, did you talk to Betty Jaeger?

A Yes, I did.

Q What was your conversation with her?

A I briefly told her what the plan was. I told her that Miss Reddy had maintained a similar account for the directors. I explained that that account was apparently being discontinued, that she had asked me and I certainly did not have the time and I asked her if she would be willing to handle the funds. It was a very brief discussion, and she agreed to do so.

Q All right.

A I then suggested that when the time came, that she review with Miss Reddy the procedures that she had in a very similar program, and I thought that would be good for her in setting up the books.

She was a very competent person and I had a lot of confidence in her ability, and I knew that she would do a good job.

I believe that Mr. Clifford may have suggested my handling the funds, but I absolutely no time to do that.

Q Did there come a time when you asked certain officers whether they would be willing to join the program?

A Yes. Mr. Dowd, in going over the list, I believe this was rather preliminary, after some of the names were checked off, Mr. Dowd asked me if I would be willing to discuss this matter with approximately six or seven officers that were

directly accountable and responsible to me. I believe there were seven, as I recall.

Q Did you do so?

A Yes, I did so.

Q Okay.

A At a later date.

Q Do you recall the officers that you spoke to in that regard, their names?

A Mr. Lamberton, Mr. Knoess, Mr. Barrie, Mr. Guffline, Mr. Sly.I may have missed --

Q Fretz?

A Mr. Fretz.

Q Okay. Now, will you tell us -- I don't want to go through each one. Would you tell us the practice that you followed when you talked to these officers concerning the possibility of joining the club? What was your practice? What did you tell them and things of that regard?

A To each of these officers, I explained to them what had taken place in the past. I explained the directors' program, the fact that they had indicated their intention not to continue.

I told them about the bank's position, that the bank needed to continue the advisibility, I understood, and that it would be beneficial to the bank in obtaining business for the

bank.

I explained to them that it was strictly optional with them. I explained that the bank had indicated a program to me of payment of seventeen hundred dollars and that each participant would contribute one hundred dollars per month. The five hundred dollars, I indicated, was for the purpose of taking care of liabilities.

There were several discussions with people. One or two after talking to me for a while said they would like to think it over and I said, "By all means."

I think Jack Fretz was one of them. I think Mr. Sly was another.

Mr. Fretz wanted to talk to his wife and I believe he came back to me in a few days.

Mr. Sly, I believe, possibly one or two days.

In some of my discussions with people, the subject of raises came up and I indicated to them, to each one of them, during those discussions, that this adjustment in so far as I was concerned would have no effect on any future merit increases that they might be entitled to.

I also told one officer, who had questioned some items, that it would make no difference in his progress in the bank whether he joined or not. I am pretty sure of the name of that officer but not that certain.

Q What is the name that you reasonably are sure of?

A I believe it was Mr. Bernard Knoess.

Q Okay. What else did you discuss?

THE COURT: I think we should stop right now. One more question? Okay.

MR. RYAN: 61.

THE COURT: All right. Go ahead.

Q Did you, Mr. Powell, ever say to any officer that if you don't join this program, it's going to adversely affect your position at the bank?

A Anything but.

Q What did you tell them?

A Absolutely not. That it would never affect their progress in the bank, in so far as I was concerned.

I had a record in the bank of recognizing people for performance. That was it.

MR. RYAN: Thank you, Judge.

THE COURT: All right. We will recess.

You can step down, Mr. Powell.

We will recess until tomorrow at twelve o'clock. I cannot help it. Unless you want to come in at ten and wait. You have your choice.

We cannot put it over to next Monday. We

THE COURT: All right. Are you all ready?

MR. PATTISON: Yes, your Honor, ready.

THE COURT: Bring in the jury.

(At 11:15 a.m., the jury took its place in the jury box.)

THE COURT: All right, good morning, everyone.

MEMBERS OF THE JURY: Good morning, your Honor.

THE COURT: Has anyone heard, seen, or read anything about this case since the time you left the courthouse?

(No response.)

F R A N K P O W E L L, having been previously sworn, testified further as follows:

THE CLERK: Mr. Powell, you are still under oath, please be advised.

MR. RYAN: Your Honor, I would like to offer into evidence Defendant's quadruple A and Defendant's quadruple C, the letters to the Shea firm.

THE COURT: All right.

MR. PATTISON: Okay.

THE CLERK: Defendant's Exhibits quadruple A and quadruple C received in evidence.

(So marked.)

DIRECT EXAMINATION A 2535

BY MR. RYAN:

Q Now, Mr. Powell, Defendant's Exhibit CCCC is a covering letter to Miles McDonald dated November 18, 1974; correct?

A Yes.

Q And attached is a schedule of officers and their salaries for the year 1966-67, and '68; correct?

A Correct.

Q And you forwarded that to the Shea firm; isn't that correct?

A That is correct.

Q And the schedule does show, does it not, that a $1700 increase was granted in '67 and '68 to the officers participating in the program?

A That is correct.

Q Okay.

MR. RYAN: Let me just, if I may, your Honor, in the interest of time, hold this up for the jury.

It is the covering letter addressed to Miles McDonald dated November 18, 1974.

"Shea, Gould, Climenko and Kramer,

"330 Madison Avenue, New York, New York.

"In accordance with your request, I have

obtained Personnel Department records of salary adjustments for the years 1966, 1967, and 1968, for those officers listed on the sub poena, who were employed for either all or some of the years in question.

"Sincerely,

"Frank Powell."

Now attached to this you will see a schedule with columns, one for the name of the officer, the next column is starting salary, the next column is the date of hire, the next column 1966, next column 1967, next column 1968, and you will see on the schedule for example, that Mr. Hart received a $1700 increase effective November 17, Mr. Lamberton got an increase of $1700 effective November 27, the same with Mr. Brooks in 1968.

Q All of these are listed under schedule; is that right?

A That is correct.

Q You caused that to be prepared by the personnel department for the Shea firm?

A I did.

MR. RYAN: I have no further questions.

Thank you.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good morning, Mr. Powell.

A Good morning.

Q Mr. Powell, just a few questions:

Can you see that chart over there? Do you want me to bring it over?

A Yes, I am familiar with it.

MR. NAFTALIS: May I put it up here, your Honor?

THE COURT: Yes.

Q Mr. Powell, I think you testified you were with the Security National Bank or its predecessor bank for a considerable number of years is that correct?

A That is correct.

Q As many as some forty-odd years?

A Since 1925.

Q I think you indicated that prior to 1966, Mr. Herman Maass held the title of Chief Executive Officer, Chairman of the Board and President of the Bank; is that correct?

A That is correct.

Q There came a time in 1966 when Mr. Clifford came over and was appointed President of the Bank?

A In approximately February of '66.

Q And at that time Mr. Maass still retained his

title of Chairman of the Board and Chief Executive Officer of the Bank?

A That is correct.

Q Is it fair to say that Mr. Maass was still the number one person in the bank?

A Definitely.

Q And that continued through 1966, 1967 and through 1968 until Mr. Maass resigned?

A Correct.

Q So therefore, looking at this chart, which is the chart of the organizational structure of the Bank as of '69 and '70, in '66, '67 and '68, Mr. Maass' name would be where Mr. Clifford's name is on the chart?

A That's correct.

Q And Mr. Clifford's name would be where Mr. Travers' name is on the chart?

A Correct.

Q Now, I think you also indicated that the first connection that you had in any way at the Security National Bank with political contributions was based upon a request to you sometime in 1967 to buy a ticket to a dinner; is that correct?

A Approximately March or April of '67.

Q And was it Mr. Maass who asked you that; is

that correct?

A I believe it was Mr. Maass, to the best of my recollection.

Q Now, now during the years -- I think you indicated that at the time you left the bank you had a conversation with Mr. Clifford and others about discontinuing your participation in the contributions' program is that correct?

A Yes, I did several months before.

Q Other than that, during the years 1967, '68, '69, '70, '71 and '72, up till your retirement, did you and Mr. Clifford ever have any conversations about the contributions program?

A No, I cannot recall any conversation with him about that program.

Q Is it fair to say, however, that even though you never spoke with him about this to him, you and Mr. Clifford were in constant regular contact on all the varieties of bank business?

A General operations.

Q You and Mr. Clifford would discuss things that were important in the operations division; is that correct?

A Mergers, acquisitions, stock issues, things of that nature.

Q Matters of importance to the bank?

A Operational matters.

Q And the subject of contributions was not one of such particular importance that you and Mr. Clifford ever bothered discussing about --

MR. PATTISON: Objection.

Q Was it of any particular importance to you and to Mr. Clifford, would you bother to discuss it --

MR. PATTISON: Same objection.

THE COURT: Yes, sustained.

Q During the years 1966 and on, after Pat Clifford joined the bank, is it fair to say that he was out of the bank and in New York City very frequently on bank business?

A He was out of the bank on numerous occasions.

Q Was that on bank business?

A Definitely, and also in connection with various banking associations which I think he was affiliated with.

Q When you say various banking associations, will you tell us what they are?

A The New York State Bankers, later on the American Bankers Association.

(Continued on next page.)

Q And there came a time, did there not, when Mr. Clifford became president of the New York State Bankers Association?

A That is correct.

Q And as a result of that, he was out of the bank in connection with his activities as president of the New York State Bankers' Association; is that correct?

A Considerably.

Q And you mentioned the American Bankers' Association, there came a time when Mr. Clifford was named to be the head of the Commercial Lending SEction of the American Bankers' Association?

A That is correct.

Q And that also placed a considerable demand on his time; did it not?

A Occasionally it did.

Q And he was out of the bank from time to time in connection with his activiites as head of the Commercial Lending Section of the American Bankers' Association?

A That is correct.

MR NAFTALIS: I have nothing else, your Honor.

THE COURT: All right.

Anyone else?

MR. COHN: YOur Honor, may I leave for a moment to get my briefcase which I left in the room?

THE COURT: Sure.

MR. COHN: Thank you.

CROSS-EXAMINATION

BY MR. PATTISON:

Q Sir, you said I believe that in 1967 Mr. Maass approached you and asked you to purchase tickets; is that correct?

A Yes, he asked if I would be willing to contribute $100 toward the purchase of some tickets. I'm not aware of what they were.

Q And you in fact did; is that right?

A Yes, I did.

Q And you did not get any raise for this, or this money was never paid back to you?

A No.

Q Neither by bonus, raise or any other way?

A No, sir.

Q Sir, then you said I believe that the next time you had anything to actually do with this matter was leter in the year; is that right?

A That is correct.

Q 1967, in the fall, Mr. Dowd came to you with a list of bank officers?

A Mr. Dowd approached my office and said he would like to discuss the matter with me, which we proceeded to do.

Q What did he tell you and what did you tell him?

A Mr. Dowd advised me that the directors who had been contributing to a program out of which they were con-ributing some of their director's fees, they had decided to discontinue that program. Mr. Dowd told me that the bank had been successful in their program, the bank's visibility had been reasonably good and the bank had remained competitive with other institutions in that general area. He told me that he felt it would be very necessary for the bank to continue it and the bank had decided that it was going to ask some of the senior officers of the bank to make contributions to a salary plan.

I told Mr. Dowd that I felt I personally could afford to do it but that I felt there were not very many other officers in the bank that were in such a financial position, at least not until perhaps their salary adjustments that might take place at the end of the year, which was a couple of months off in the future.

Q Did you wait for a couple of months to give raises?

A No, Mr. Dowd felt it was important and urgent that apparently something should be done reasonably soon and he told me that they would like to ask some of the officers in the bank to participate in such a program and --

Q Well, let me interrupt you, if I might, at this point.

Was this in the same meeting?

A That was the same meeting.

Q In other words, the raises, the raise issue came up, there was no lapse of time involving days or weeks, but Mr. Dowd told you when you raise the issue of whether officers could afford it or not that the choice had been made already to give raises?

A Well, I got the opinion that the program had been reviewed, and in fact during our discussion I questioned Mr. Dowd as to the propriety and what other banks had been doing, and Mr. Dowd told me that he had done some research and that this matter had been approved by counsel.

Q You raised the issue of whether it was proper or not?

A I did.

Q Why, sir?

A Because I wanted to know if this was a proper method of doing it, I knew that the directors had been making these contributions out of their own fees, it seemed to be a similar plan and I just wondered if that would be a proper thing to do. He assured me that it was and that it had been approved by the bank counsel.

Q Sir, isn't it a fact that the reason you asked whether it was legal was due to the fact that raises were to be issued for the specific purpose of having the officers pay $100 back and that was the background?

A No, Mr. Dowd told me that contributions, or at least an adjustment of salaries to people that could be used voluntarily, at their discretion, was proper, that there could be no coercion, no pressure, it was entirely up to the individual.

Q Sir, please, I'm asking you and directing you to the point wherein you first asked whether it was proper prior to getting the answer, okay, and at that point what was it about that plan which caused you to ask whether it was legal or not?

A I think it was just something in my mind that I just wanted to know whether this was a proper thing to do.

Q Now, you said also that Mr. Dowd told you that

these salary adjustments were to be given to the officers to do with as they liked?

A WEll, it was voluntary on their part to participate in this plan, there would be no coercion, that was a part of the understanding, strictly voluntary and it would be up to each one to make their decision for himself.

Q Sir, were the officers to get a raise whether they agreed or not?

A Not to my understanding.

Q That is they would only get a raise when and if they agreed to pay back $100 per month; is that right?

A I was asked would I be willing --

Q Sir?

A I think I have to say --

Q All right.

A They wanted to be asked if they would be willing to participate in a plan whereby they would make donations out of the adjustment that they might receive would they want to do it and would they be willing to participate in such a plan, it was strictly operational to them.

Q Sir, if they said yes, then they would get the raise, and if they said no they wouldn't get the raise?

A That is correct.

A 2547

Q Is that right?

A That is correct.

Q Now you said that Mr. Dowd had a list of bank officers; is that correct?

A Yes, as I recall he had a list of names, I'm not just sure what form it was, but there were a number of names on the list.

Q And they were the names of the then current officers; is that right?

A The existing officers in the bank.

Q Sixty, about?

A No, I would say the listing was much less than that.

Q Well, how many officers were there in the bank in the fall of 1967?

A Including junior officers, I would suppose 50 to 85, maybe more.

Q More than 85?

A This would include branch officers, junior department officers, senior officers, executive officers.

Q And as a result of this meeting and as a result of having gone over the list, how many officers, it was ascertained, would be asked?

A I think it was eliminated to approximately

20 officers, in round figures, to the best of my recollection.

Q So that is approximately one-fourth, one out of four officers?

A Yes, I think they were all officers in more senior positions in the bank.

Q Now, isn't it a fact, sir, that there were some officers in senior positions who were not asked?

A Yes, that is correct.

Q How was it ascertained which officers would be asked and which would not?

A Well, as the list was shown to me, as I recall there were one or two officers whose performance I thought had not been up to par, there was some question about them, some reservation in my mind that perhaps they might not survive, and I didn't think that they should be included, and one officer whose name I don't recall I think was near retirement and possibly another: this was just my personal thoughts on the matter.

Q There were about four or five?

A Possibly four or five, most of the officers did not work for me and I was not informed about them, but the ones that I did have closer contact with I felt any adjustment which would be given to them should be

given to people that are at least performing on a standard.

Q Sir, an officer wasn't to make any money out of this, was he?

A No, he probably would have gotten some salary benefits, any salary that was adjusted to a person's account he would be the recipient of any profit-sharing adjustments that might have been declared, and in very rare occasions it might have been possible it might have placed him in a higher bracket for life insurance benefits, but that wouldn't be anything monetary to his pocket. The best if you had, say, an eight, nine, or ten percent bonus, well, it might have contributed something like $100 to himself.

(continued next page)

Q Sir, there was no immediate monetary benefit to any of the officers who got raises as a result of this plan?

A Except through profit sharing contributions.

Q That included you, too?

A Anybody who had participated, if he got a 10 percent bonus, well, if he got a bonus, if he got a $1700 adjustment, it could have amounted to $170.

Q So as a result of this meeting, the list was winnowed down from approximately 85 to about 20?

A I don't recall it being whittled down at all, I think there were a certain number of names on that list, I would assume they had been gone over before they had been presented to me to look at.

Q And do you know what the factors were that went into the prior narrowing down?

A I would think perhaps Vice President and above, Administrative Vice President and above.

Q Did you ask Mr. Dowd how he got the list down?

A No, I didn't ask, no, but I could see from the names that it was more senior officers.

Q Now, were you asked to fill out a salary review form, or were the officers who were to get the $1700 raises?

A No, I was asked to talk -- I think there was

six or seven,possibly eight officers that were accountable to me in the operations area and Mr. Dowd asked that would I be willing to talk to them. I said that I would.

I explained to them the full story, I explained about the directors' program, the discontinuance of it, the need of the bank to participate in the affairs and that it had been apparently successful in maintaining good relations with the various municipalities, and that they were being asked if they would be willing to participate, strictly voluntarily. they could think it over and it was strictly up to them.

One or two asked me if I was participating in it and I said, yes, I had agreed to. I explained to them that I had been told that it had been approved by counsel.

Q Sir, did you tell them about the raise then?

A Oh, yes, I eventually told them that they would receive, if they were willing to participate, a $1700 adjustment from the bank and that the bank would ask them to make monthly contributions of a hundred dollars per month and that the balance would be adequate for tax liabilities.

Q And you told them how they would pay this?

A I said that they would be asked to contribute a hundred dollars a month to a fund.

Q You told them what form this would actually take, didn't you, as to who they would pay and how much?

A Not originally, I think the original question was just would they be willing to participate.

A lot of the people wanted to know how it would affect any future merit raises. I was very explicit on that and I felt very strongly about it. I said that merit raises are based strictly on performance and production and this had absolutely nothing to do with that. I even told one individual that the fact that he might not participate in it would certainly not have any effect on any future increases or his progress in the bank.

Q Sir, what you told these officers was the product of your meeting with Mr. Dowd; is that right?

A Absolutely.

Q You had gone over with him what the officers would in fact be actually told?

A Very thoroughly.

Q Did Mr. Dowd ever tell you to tell these officers that the raises were to be for them, whether they agreed to participate or not?

A No, I don't recall any conversation to that effect.

Q And as a result you never told any of the officers that you had seen, you never told any of the officers whom you first talked to in the fall that these raises were

theirs whether they agreed to participate or not?

A No, I told them that the raises would be theirs permanently, it was a permanent adjustment to their salary.

Q Now, sir, some of the officers or all of the officers that you asked worked under you; is that right?

A Yes, they had been or were, those seven or eight.

Q And, sir, was it or was it not a policy bank rule, a policy, that an officer's salary adjustment was to include and be paid upon a salary form, a review form, filled out by the officer's board?

A Well, a normal program for salary adjustment annually would require an annual review form. On these particular ones when I approached the people, some of them took two or three days to decide, they asked if they could think it over, and I said absolutely, it was strictly up to them, and --

Q Sir, please.

Officer's salary review forms were used to give officers raises, that was a bank policy?

A Generally speaking.

Q Were they used here?

A I'm not sure, because when I contacted each of the officers and got their answers, I passed the information

on to Mr. Dowd, he had come to me on the program, I told him what officers would be participating in the program and I gave him that information.

Q Sir, the forms were to be filled out in the normal course of events by that Officer's Board; right?

A Well, this -- this was different. This is something that came from the management of the bank and I assumed it was coming from Mr. Clifford and Mr. Dowd.

Q Did you ever ask them?

A No.

Q Well, did you ask whether they had filled out salary review forms?

A I did not.

Q Did you ever learn, sir, that none were in fact used?

A I would have no way of knowing because at that time I was not a member of the Board, I didn't participate in the meeting, and it was the responsibility of the Personnel Department to make all presentations to the Board of Directors for salary adjustments.

Q The personell section did not fill out the forms, right?

A I don't know and I would have no idea.

Q In the normal course, personnel did not fill it

out?

A Normally, they would not, no.

Q You had filled out many forms?

A For mine, yes.

Q For officers that were under you?

A That is correct.

Q Did you ask Mr. Dowd whether you should fill out the forms?

A No, I did not.

Q Did he tell you not to?

A No, he did not, he asked me to give the information, which I did.

Q That topic never came up?

A No, sir.

(Continued on next page.)

CROSS-EXAMINATION BY

MR. PATTISON (continuing):

Q Did you discuss with Mr. Clifford the fact that Mr. Dowd had asked you to approach these officers?

A No, I had no conversation with Mr. Clifford.

Q Did you ask him about whether or not salary review forms were or were not to be used in connection with these raises?

A No, sir.

Q You assumed, sir, based on prior practices and what you knew about how officers raises were put into effect that the Board had to approve it?

MR. HAFTALIS: Objection to the assumptions of the witness.

MR. PATTISON: Based on his knowledge of 50 years in the bank.

THE COURT: All right.

A I would assume that the forms or whatever information was prepared and passed on to the personnel department -- it was passed on to the personnel department for their subsequent presentation to the Board for such salary adjustments.

Q Sir, there came a time, did there not, when you learned that that had not been actually done?

A I cannot actually say that I found that out -- no, I did not -- until some of the information had been presented at this trial.

There was some indication that some of the records might not disclose that.

A Sir, during 1974 and 1975, at least you had intimate contact with the materials that the grand jury asked for; is that right?

MR. BANNIGAN: I object.

Once he learns information before the trials start, that is irrelavant.

MR. PATTISON: I believe he said he learned it for the first time here in court.

THE WITNESS: During the procedures.

THE COURT: That's what he says -- during the procedures.

Q Sir, I believe you said that when you first started making one hundred dollar a month payments you paid in cash; is that right?

A Yes, I did.

Q And isn't it a fact, sir, that you told Mr.Fretz that he was to pay in cash?

A No. I don't think that is correct. I don't recall telling him that fact.

Q Might you have, sir?

A Payments could be made in check or cash, in any way anyone wished to make them.

I would think that people --

Q Sir, just try to answer the question, Mr. Powell.

Did you tell Mr. Fretz he was to pay in cash?

A I do not believe I did.

Q Might you have?

A I do not recall telling him that.

Q Was the manner of payment discussed in the first meeting with Dowd, is it Dowd?

A No, I don't think there was any reference to that.

Mr. Dowd had asked me if I would be willing to handle the funds, and I told Mr. Dowd I was entirely too busy, I had too many important functions to do and I would not be responsible for handling any funds.

Mr. Dowd asked me if I thought Mrs. Jager, an assistant to me, who was a junior officer and part time secretary to me, if she might be willing to do it.

Q What did you say to that?

A I said, I will ask her and we will see.

I proceeded to ask Mrs. Jager.

I explained to her briefly what was taking place. I explained that the directors are discontinuing their own

program --

Q May I just interrupt.

Prior to your asking any officers whether or not they would agree, had you approached her and told her?

A No.

Q In other words, you did not approach her until you had a list of names; is that right --

A That is correct.

Q (continuing) -- of those officers who would be sending her monies?

A Would be asked, would be requested.

Q Now, the list that you gave her was of possible officers?

A No. The list was given to her at a later date after it was determined who would be making contributions.

Q And wasn't the first contact she had with you about this plan?

A No, I don't believe it was.

Q Sir, did you tell Mr. Sly that he was to pay in cash?

A I do not recall telling Mr. Sly that he was to pay in cash.

Q Might you have? Would that be in accordance with anything that was talked about in the meeting with Mr. Dowd?

A I do not believe it was. Cash and checks are synonymous -- one or the other -- it makes no difference -- never did.

Q Now, Lamberton, James Lamberton was also asked by you, sir?

A That is correct.

Q And you told him the same thing as you told Mr. Fretz and Mr. Sly; is that right -- mainly?

A Basically, yes.

Q Did you tell Mr. Lamberton that the office of controller had approved this plan?

A No, I did not at that time.

I remember his testimony but I did not make that comment to him at that time.

Q Did you ever, sir?

A At a later date.

Q When?

A Subsequent to the meeting that Mr. Langdon had with Mr. Clifford, Mr. Dowd and myself.

I believe there was some discussion here with some representative of his office with Mr. David Dowd and Mr. David Dowd made a comment to me at some later date that the controller had no objection to the program that the bank had --

Q Sir, sir -- Mr. Dowd told you that a represen-

tative of their office had approved this plan?

A I think he had been talking with Mr. Langdon -- subsequent to that meeting, possibly the same day. I can't recall.

Q Do you recall where it occurred, whether over the phone?

A No, it took place in the bank.

Q And Mr. Langdon told Mr. Dowd -- is that what Mr. Dowd told you -- that Langdon --

A I'm not sure if he, Mr. Langdon, is the person but he made a comment at the controller's office was in accord with the plan the bank had and I know this took place subsequent to this meeting and Mr. Lamberton, I think, still had an office with me or adjacent to me and --

Q Sir --

MR. RYAN: May we let the witness finish?

MR. PATTISON: Yes.

A (continuing) I believe he heard that conversation but I did not discuss with Mr. Lamberton at the time of asking him, nor did I make any reference to the controller's approval. It was strictly that the bank had cancelled approval.

Q Did you tell Mr. Lamberton what Mr. Dowd told you or do you think he might have overheard that?

A It could have been either way.

(continued next page.)

BY MR. PATTISON:

Q But you could have told him right to his face --

A I believe it took place rightin the same office.

Q Sir, I believe that Mr. Ryan asked you questions as to whether or not you had anything to do with -- I think that was the phrase used -- to do with the club other than asking officers to join; is that right?

A The only two participations I had was first to ask the few officers accountable to me.

I also asked Mrs. Jaeger if she would be willing to handle the funds and that was it.

Q And once she said she would be, you never talked with her about it again?

A I don't think that would be fair to say.

Mrs. Jaeger, on one or two occasions, might come into my office and say, "I have a request here for a check for, say, two tables," and just make a comment to me.

My comment to her was originally -- and always the same -- as long as it was approved by the proper people in authority, that was up to her.

I had nothing to do with the approving of

any participations.

She also told me about the check that Mr. Shea had drawn that had been given to her by Mr. David Dowd. She came in and spoke to me about that and that is about the limit of our participations.

Q Sir, there were occasions when she would come to you and ask you whether or not she should issue a check for this particular function or that particular function; is that right?

A I think that is not correct.

She made a statement, as I remember, in her testimony -- and there were occasions once or twice but I'd say very, very few, where she would get a request and would have somebody's signature on it or initials and she might just ask me something about it -- who I thought it was and that was it.

But I never once approved any distributions of funds out of that club -- not once.

Q And Mrs. Jaeger knew you did not have that role; is that right?

A That came strictly from the department that was responsible for it.

Q Which was that?

A That would be through Mr. Dowd's section,

Marketing and Business Development.

They handled all those affairs.

Q Isn't it a fact, sir, that you told Betty Jaeger whom to draw checks to?

A No, sir.

Q Never happened?

A No, sir.

Q You're sure of that?

A I am positive.

Q Now, did you ever talk with Mr. Dowd or anyone in his office about how these officers, how this officers' group money would be used?

a No --

Q Did you ever discuss with Mr. Dowd, Dutra or anyone from that office?

A No. Mr. Dowd did not discuss those matters with me. That was far removed from my responsibilities.

Q So you would have no idea what factors went into the decision to either send money or not?

A Absolutely not.

Q Now, sir, there came a time after you first contacted some seven or eight officers, I believe you said?

A Right.

Q When there was a second round of raises; is that right?

A Yes. I heard rumblings to that effect.

Q This was about a month afterwards, wasn't it, sir -- 11/27/67, was the first batch of $1,700 raises?

A I think they took place in the fall of '67 and in the very early part of '67 --

Q '68.

A No, '68 -- the very early part of '68. I think they were all part of one group.

MR. PATTISON: Excuse me a moment, your Honor.

THE COURT: Yes.

(Pause.)

Q Sir, and was there any reason why some officers got raises 11/27 and some not until 1/8?

A Not that I know of.

Q You had asked all of the officers that were on your list, as it were, prior to the 11/27 raises; right?

A I think in the fall of the year, yes. There were one or two that didn't give immediate answers. I don't recall how long it took them to decide. But there was no pressure applied to them.

There may have been one or two that took two or three weeks. It could have been.

Q Sir, were there any salary review forms prepared by you or by anyone else for the 1/8 batch of $1,700 raises?

A 1/8?

Q 1/8/68.

A I wouldn't have the faintest idea.

Q You never saw any, did you?

A No, sir.

Q And there still was no talk with anyone about whether or not this form should or shouldn't be used?

A My sole communication was to notify Mr. Dowd when the ones I spoke to agreed to participate. I conveyed that information to him and that was the end of my participation in that program.

Q Now, sir, some four months later in 1968, April, April 15th, there was a third batch of officers who got $1,700 raises; is that right?

A Yes, I recall that.

Q This was when you wrote the memo?

A Yes.

Q I believe you said you talked with Mr. Clifford

and Mr. Maass about this?

A Yes. I had been called down to Mr. Maass' office, I believe it was, to the best of my recollection, and the subject of our conversation at that time had to do with the proposed acquisition of the Second National Bank of Hempstead, which did subsequently take place in the fall of that year.

During the end of that conversation, a list was given to me of, I think, six or seven names and these officers were to receive salary adjustments and it was proper, I thought, and is the procedure of mine to prepare a memorandum confirming what I was told.

I addressed it to Mr. Maass who was the chief executive officer, and I sent a copy to Mr. Brogan who was the personnel officer.

I felt that that was my part of the job and I proceeded to do it.

Q Now, sir, these officers, the ones that got the raises, during this -- did they -- were these raises approved by the board?

A I couldn't tell you. I was not a member of the board. I was not the secretary of the board and I don't know presentations were made by the Personnel Department to the board.

It was the responsibility of the Personnel Department to present all salary adjustments, officer assignments, changes in titles. That was their responsibility.

Q In this memo, you sent a carbon copy of Brogan?

A Yes, to inform him of the salary adjustments --

Q Which had been agreed to already?

A Partly agreed to. That's correct.

It could have happened many times that salary adjustment had been approved and put into effect and would later be confirmed by the board as they are presented by the Personnel Department to the board retroactive.

Q So you were informing Brogan of that action; is that right?

A That's what I was told.

Q Sir, even when a raise was made effective prior to the board's approval, there would be subsequent approval; right?

A Certainly.

Q When you began to participate in meetings of the board, when was that?

A In about '69.

Q Six or seven months after these raises?

A Yes.

Q Did you learn then that this batch of raises had never been approved by the board?

A I had no reason to go back over old board meetings.

Q You assumed they had, in accordance with normal banking practices?

A I assumed they went through the processes.

Q Did you discuss with anyone either prior to the raises being handed out or after that the board would not be told this?

A No, sir. I had no discussions.

Q Sir, the Personnel Department came under your area; is that right?

A They came under me for administration purposes.

Q And Personnel, in order to make -- to put into effect an officer's raise, would use a salary review board; is that right -- this was part of the operations that you were in charge of?

A Part of the procedures.

Q Isn't it a fact, sir, that a decision was reached not to use salary review forms for the April 15,

'68, raises?

A I would have no knowledge of that at all.

Q Did you assume that they were used, sir?

A I would certainly assume they went through the normal process.

Q Sir, in regards to your assembling documents and records pursuant to the Grand Jury request, did you ever come across a salary review form for anyone of the $1,700?

A I did nothing of that sort at all. I merely asked a representative of the Personnel Department -- I think his name was Pual Frank -- he was a rather new employee there -- I called him into my office and told him that I would like to have a record of the various salary adjustments and the dates they had been made for these particular officers for the three years that I had been asked to ascertain.

He obtained the information, typed it out and gave it to me, and I transferred it to --

Q Sir, did he ever tell you Mr. Powell, there aren't any salary review forms in here?

A Never. I assume he took the information off the Visi record sheets which is the source of data in the Personnel Department.

Q And those cards would just give the fact of the raise?

A They would show the raise and the date.

Q When it was issued and what date; right?

A That's correct.

Q Wouldn't show why?

A No, never.

Q The salary review forms would show the base for the raise; is thatright?

A It could. It could merit. It could show promotional, various things.

Q Political contributions, could it show that, sir?

A I don't know whether or not it would or not. I can't tell you because I didn't see them.

Q In 1970 you asked Mr. Doud to join the club -- Robert Doud?

A Yes, that was in the fall of 1970.

I approached Mr. Dowd prior to the end of theyear and explained to him the program which he was well aware of.

He worked very closely with Mr. Lamberton and I asked him -- I told him I had been asked to see whether he would be willing to join the group, and I

explained briefly what it was.

As I say, he was well aware of it. He said he would. I would assume that took place sometime in the early part of December of 1970.

Q And you told him about his raise?

A Not then, no, sir.

I would never tell anybody about an adjustment or raise until it was approved by the board of directors. No officer has any right to indicate any salary adjustment unless the board has approved it officially.

Q Well, sir, in other words, you had two meetings with Mr. Doud about this then; right?

A That's correct.

Q And the first one you didn't mention anythin about a raise to compensate him for the $100 a month payments and to cover the added taxes?

A I'm sure that I mentioned that if he'd participate that he'd be receiving an adjustment in salary of -- I am not sure then whether it was $1,700 or $2,000, but whatever it was --

Q Let me just interrupt if I could about that.

There came a time when officers' compensation for these $100 a month payments was raised from $1,700 up to $2,000; is that right?

A Yes, that did take place, but I wasn't aware of that for sometime, I must admit.

Q How did you first become aware of it?

A I think I was told.

Q By whom?

A I think it came from Mr. Dowd.

Q When?

A Sometime after the original group of $1,700 adjustments.

Q Did you ask him how that came about or why?

A No, I did not. I know that one or two people had mentioned to me originally -- they questioned whether $500 would be sufficient to cover their taxes, but I had been told that it was $1,700 -- that was it.

I'm sure the $500 wasn't sufficient to cover my tax liability but $1,700 was the approved amount.

Q So you told them that was all they could get?

A I said that's what's been approved and that's what I had been told and at some later date, apparently there was some change decided on.

I wasn't a participant of that plan and did not know about it.

Q Certainly it was prior to your asking Mr. Doud; right -- because you told him there was a $2,000

salary increase involved?

A That's correct. I told him there would be an adjustment of his salary.

Q That was your first meeting with Mr. Doud?

A It was customary to talk to some of the more senior officers prior to the salary review about their performance and how they felt about the bank.

Quite often I would talk about their progress, perhaps some suggestions about improving their performance, but it was a preliminary discussion.

Q And it was in the course of this that you told him about the $2,000 raise?

A I asked if he would be willing to participate in this group.

Q And about the raise --

A Not any other raise.

Q The $2,000?

A Yes.

Q And this meeting that you would have with officers telling them about their work for the past year, et cetera, would ultimately be put down on his salary review form; right?

A Yes. I quite often repeated at the time, most of these people were employed eight or 10 miles away

from my office at the Data Center and administrative heads, and subsequent to the board meeting and the approval, I would always try before the end of the year to go down and visit all the officers.

I would call up and say: I will be down by 5:00 o'clock; I want you all to stay and I want to go over some matters with you. At which time I would proceed to discuss it with them.

(Continued on next page.)

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Q And you would also discuss his raise with him?

A That is right.

Q This was after the Board?

A This would be after the Board approved.

Q And you would put down on the form what his reaction to his raise was, is that right?

A Yes, sir. Quite often I would make a comment. I am not sure whether Iwrote it down, but I have a hunch I would mention something about whether he was satisfied or --

MR. PATTISON: May I have this marked, your Honor?

THE CLERK: Four-page document marked for Identification as Government Exhibit 190.

Q I ask you to look at this please and ask you if you can tell what it is.

A This is the salary review form. It is called an officerappraisal form. It is prepared by the personnel department and contains certain data about the officer, his present salary, his date of employment, amount of his last salary adjustment.

Q That was the salary review form that you prepared for Mr. Robert Dowd?

A It was prepared for me by the personnel department and I would make certain check marks as to my rating of

of Mr. Dowd.

Q And on about the third page or the fourth page you would write comments?

A Yes.

Q In other words, it was not all just check marks?

A No. I said he was fully qualified.

"Recommend a change in his present corporate title -- No.

"Do you feel he is satisfied in his present position -- Yes.

"Do you recommend consideration of a salary increase on the basis of his performance since the last appraisal -- Yes."

MR. BANNIGAN: I think we should have it in evidence before he reads from it.

MR. PATTISON: We offer it in evidence.

MR. BANNIGAN: No objection.

MR. RYAN: No objection.

THE CLERK: Government Exhibit 190 received in Evidence.

Q And further --

A Then I wrote "Good plus." That is a general comment.

Q There is a space there, "Comments," right?

A Right.

Q Did you write anything in there?

A No, "Good -- plus."

Q Did you write anything about the fact that part of Mr. Dowd's $4200 raise had nothing whatever to do with merit?

A No, sir.

Q But were the political contributions?

A There is no comment at that time about it at all. This is prior to the Officer Salary Review Committee Meeting. This was prepared several weeks before that meeting took place.

Q And this is when you told him about the raise, the possible raise if he agreed to join, right?

A I said that if he would be willing to participate in this program, there would be an adjustment included in his salary for this purpose, but not at that time.

Q Did you put anything about that on that form?

A Absolutely not.

Q Now, sir, on the next page, what amount of raise was approved there, sir?

A At a subsequent meeting of the Salary Committee I think Mr. Dowd received $4,000 or $4200.

Q It is on that form, isn't it, $4200?

A $4200, correct.

Q 17 in this case for the club and $2500 merit?

A Possibly.

Q In other words, all of the comments which appear on that form relate solely to the $2500 portion of his raise, right?

A Insofar as his merit performance.

MR. RYAN: I have to interrupt, $2,000 went to the partition of the plan, not $1700.

MR. PATTISON: The evidence is $1700 and $2500.

THE WITNESS: I can't recall.

THE COURT: We will take a recess.

(A short recess was taken.)

THE COURT: Bring in the jury.

(The jury took it's place in the jury box.)

BY MR. PATTISON:

Q Mr. Dowd -- I am sorry, Mr. Powell, on Mr. Dowd's, Robert Dowd's salary review form, isn't it a fact, sir, that you justify the entire raise on merit and merit solely?

A No, that is not true. Officer appraisal forms are strictly on a merit form, they are not used for any other purpose. They are used strictly for that purpose.

Q Well, sir, the form itself has a space for any

other factors other than merit, isn't that correct? Would you please refer to item No. 1?

MR. RYAN: Objection.

A That is right, it says, "Are there any other factors, circumstances or conditions not covered in this appraisal."

Q What did you write there?

A Nothing, there is nothing to write, no reason to write.

Q What about the $1700 salary raise?

A That did not come up until the Officer Salary Review Committee meets. That was the discussion that took place.

Q You had already told Mr. Dowd about this, didn't you?

A I had told Mr. Dowd that if he would be willing to participate in this that the bank would make an adjustment to his salary but that has to be approved through the normal channels.

Q That $1700, that is to be approved?

A It should go through the Salary Review Committee.

Q Through the normal channels?

A Yes.

Q It had never been mentioned to them at the time?

So there came a time then after the Board approved the raise, right, when you sat down with Mr. Dowd again?

A That is right.

Q And did you write a paragraph, a sentence or two, concerning the officer's comments about his raise?

A I wrote down on the back of the form I discussed his responsibilities, the future that he had, that it was a generally favorable reaction and his salary adjustment was well received by Mr. Dowd.

All $4200, which included the contribution part.

Q And at that point did you make any comment about the $1700?

A As part of the $4200, as I already told him before about it.

Q I mean on the form itself, did you write anything about it?

A No, no place.

Q Was there a decision made not to put anything about that on that form?

A Of course not.

Q Of course not?

A No reason not to. I didn't do it not to disclose anything, if that is what you are inferring.

Q But you didn't put it down there?

A No, I just made the comment.

Q And you presented the raise thereafter to the Board, right?

A No, I think you are mistaken, Mr. Pattison. This comment was put down after the Board of Directors had approved his salary adjustment and their approval was subsquent to the Salary Review Committee approval, which consists of the Chairman of the Board, the President, one or two Directors, Senior Officers of the bank, two or three others that would be asked and the Personnel Officer.

Q And then you presented the planned increase of $4200 to the Board of Directors?

A To the Salary Review Committee. That is when it is presented to the Salary Review Committee and then it is prepared and presented to the personnel department.

(Continued on next page.)

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BY MR. PATTISON: (Cont'd.)

Q Sir, at the board meeting December 22, 1970, you presented the officers' alsary changes, is that right?

A That is the report prepared by the personnel department -- period. I have nothing to do with the preparation of that report. That is the concensus of all the salary adjustments that have been approved by the officers' salary review committee.

Q And that included Mr. Dowd's increases, Mr. Wulffleff's raise for the club --

A That's correct.

Q Merolla's raise to the club?

A I would not know what other officers were included in the club. I had no discussions with those people. Mr. Dowd was the one man I discussed that salary judgment with.

Q So at the salary meeting -- at the meeting at the country club --

A The Crescent Club --

Q The contributions increases did not come up?

A Yes, they were all part of the salary totals that were referred and I think in this instance I may have mentioned that Mr. Dowd was going to be a

participant and he would also be entitled to a salary judgment and the recommendation was for $4,200 and that would go to Mr. Brogan. He would take it back to his office and prepare the big consolidated report for the board.

Q Did Mr. Dowd, David Dowd say anything about Mr. Wulffleff's raise which was in that same batch?

A I don't recall --

Q That part of that raise was for political contributions?

A I do not recall anything about that. I do not know who spoke to Mr. Wulffleff.

Q Did Mr. Dowd say anything about Mr. Merolla's raise?

A I don't recall any conversation about that. There were many conversations going on in the meeting. If it had been said I could have missed but I do not have any recollection of that.

Q Casey got a raise also around this time, didn't he, sir?

A I would have to refresh my memory.

Q Well, let's try.

Part of the group of raises that you presented to the board included Mr. Robert Doud, Mr. Wulffleff?

A Yes, his name is listed.

Q He got a $5,000 raise, is that right?

A This says five thousand, correct.

Q Casey?

A Right.

Q Got the same amount of raises?

A A lot of raises, yes.

Q Merolla the same amount of raise -- five thousand -- is that right?

A Right.

Q And was there any discussion at the salary review committee meeting that two thousand of those $5,000 raises were for the officer to pay back a hundred bucks a month?

A I have no recollection except as to Mr. Doud. Mr. Doud was my man and I made reference to Mr. Doud -- this is Robert Doud -- and these reports that are presented to the board are prepared to the chief of the board which was Mr. Clifford and they would be put into the file as part of the agenda and I assume in this case Mr. clifford turned to me as he often did or on a few occasions and asked me if I would present the report and I would present this consolidated part of the report as to the totals. It referred to both the officers and

department branches and executive officers. It showed the number of officers, reviewed the number of salary increases, granted the total of the salary increases and the percentages. The details of the report would not be discussed by me. If the board asked or there was some particular comment that was wanted to be made, Mr. Clifford, on occasion, would make some comments. I remember particularly on this one, this is the one where Mr. Robert Bradley's salary was reduced $7,000 because of unsatisfactory performance. I believe Mr. Travers had made that recommendation and I recall very vividly Mr. Clifford discussing that with the board members.

Q Well, just on that point, sir, was Mr. Bradley's salary cut seven thousand or wasn't it in fact more than that, sir?

A I think it was seven thousand.

Q Well, wasn't he also told that he still had to contribute $100 a month?

MR. RYAN: Your Honor, --

MR. BANNIGAN: He has not answered the pending question.

THE COURT: No, he has not.

A What is your question?

Q Wasn't Mr. Bradley's salary cut more in

A 2587

fact than seven thousand?

A No, it was not. It says, minus seven thousand dollars.

Q Part of that seven was a raise that he had gotten for the political club, isn't that right?

A I am sure I wouldn't know.

Q And after that cut, he still had to make hundred dollar contributions.

A I would have no knowledge of that.

Q You never talked with anybody about that?

A Absolutely not. I had no discussions with people about that.

Q So, these as far as Mr. Robert Doud goes -- your own man, I believe, was the phrase you used -- you didn't tell the board that part of his raise was for the club?

A No, there has never been any indication made to board members, that I can recall, as to why salary adjustments were being made. As I said, they were made for various purposes; probationary, merit, unusual circumstances such as a man that might be retiring in the near future and they wanted to show him going out in style, let's say -- some unusual performance or taking a new added responsibility but there were never any references made nor any breakdowns as to why salary adjustments were given.

BY MR. PATTISON:

Q These were all merit reasons; right? The man had put in a new plan or program; that was merit; right?

A I wouldn't call a man retiring a merit increase, for instance.

Q But the others all were; right?

A Pretty generally, yes.

Q And even when he left the bank and got a raise just prior to that, that cash was all his; right?

A Yes.

Q He wasn't morally obliged in any way to pay all of it back?

A No.

Q So this was significantly different -- a political contributions raise which the officer was morally obliged to pay back?

A Well, the raise was his and it has been testified and as I was told, many of the people did not use those funds for that purpose.

Q Many?

A Considerable, apparently. There has been testimony.

Q If you --

MR. BANNIGAN: He's repeatedly interrupting all morning.

THE COURT: All right. Let him finish.

A There were several witnesses in this trial, I believe, who testified they did not use all of their funds for that purpose for various reasons, illness, weren't asked, decided not to do it.

I'm sure I wouldn't know. I only know what I am hearing.

Q Weren't asked, sir, is that what you said?

A I believe one of the witnesses said no one asked him and he didn't make any further contributions.

I think it was Mr. Vandermark who made that comment.

Q There came a time, didn't there, that the entire process stopped?

A I left the bank in 1972, and I couldn't tell you.

Q Well, sir, you were still in the bank three out of five days a week; right?

A For six or seven hours a day, I had no responsibilities in the bank. I had no official position and my sole responsibility was to the board of directors and to do things and acts that they required me to do.

Q And part of those acts related to this actual case, isn't that right, sir?

A Only insofar as I was asked to obtain information in connection with a subpoena issued by this Court.

Q Sir, isn't it a fact that the contributions stopped following news articles relative to the issue?

A I cannot say with certainty except that I did hear one or two witnesses, I believe, testify that they stopped making contributions.

Q And Mr. Chadwick stopped asking for them?

A I wouldn't know that.

Q Sir --

MR. PATTISON: Your Honor, I am about to move to another topic.

THE COURT: Recess for lunch. 2:15.

(Luncheon recess.)

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AFTERNOON SESSION

2:15 o'clock p.m.

THE COURT: Be seated. Are we all ready?

MR. PATTISON: Yes, your Honor.

THE COURT: Bring in the jury.

(The jury took its place in the jury box.)

JOHN POWELL, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. PATTISON: (Continuing.)

Q Mr. Powell, I would like to turn now to the meeting you were at wherein you first heard about the news article I believe it was June 9, you said, June 9, 1970 when you were at an affair which you first heard it mentioned?

A Yes

Q What was said?

A I attended an affair held at the Lido Beach Country Club on June 9, I believe it was a Monday and as a former officer and chairman of the association and member of the board for a great number of years I was wandering around saying hello to people, different groups. I came to one group and there was some conversation going on and one of the things I happened to overhear, I think I had my arms around a couple of people, had something to do with the political contributions and there was reference made to a Wall Street

Journal article and it appeared that it was sometime in the past. I carried a little notebook in my pocket and I proceeded to make I think it was a pencil notation for the next day.

Q Do you have that notebook?

A The original book or the photostat?

Q Well either? Do you have the book?

A The book is back in my folder. May I get it?

MR. PATTISON: Maybe Mr. Ryan can.

MR. RYAN: Where is it, Mr. Powell?

THE WITNESS: In my briefcase in a manila envelope with seven or eight books for the years 1966 through 1974.

That is it.

MR. RYAN: That is 1970, right?

THE WITNESS: Right. I keep one of these books in my pocket for reference purposes. It says Dentist 9 a.m., Long Island Bankers Lido Beach Club --

MR. PATTISON: I move to strike.

THE COURT: Wait for an answer.

Q On June 9, that day, sir.

A Long Island Bankers, Lido Beach Club.

Q And you made a note on that date to get hold of this copy of the news article?

A The following day, on Tuesday there is an X that says look up article in WSJR.

Q At the time when you first heard this comment about the news article you had performed your functions with this club, is that right? In other words, you were not at that time, that is you had no active role?

A I was not active in the club at all.

Q And you had been assured that the bank's system was in fact legal and proper, is that right?

A Absolutely.

Q Can you tell us whether or not there was anything said at that meeting that caused you to worry about the bank's political contribution system?

A Not really, the general discussion --

Q Was important enough though for you to make a note of it to get hold of it?

A There was some comments made about it and it sounded interesting and I always make a policy to look up --

Q Did you tell --

MR. BANNIGAN: I wish the witness can finish his answer.

THE COURT: I believe he finished.

MR. BANNIGAN: I believe he was interrupted. Do you want to hear the answer? Read back the answer.

(The answer was read.)

THE WITNESS: I said I always make a policy of trying to read articles that are I think informative concerning various matters and this was just one of them.

MR. BANNIGAN: Thank you, your Honor.

Q Did you tell Mr. Dowd about this article?

A Not at that time, no.

Q You knew at that time he was in charge of this area of the bank's operations?

A First I had to find the article.

Q Tell us how you went about finding it, sir?

A Well, that was quite a difficult task. There was nothing in the bank library that would indicate back as far as I thought that issue took place and in this case as I recall I was able to obtain it from the Wall Street Journal to find out it took place several months before. I made a couple of inquiries and no one seemed to know too much about it. I asked a friend of mine in the American Bankers Magazine, the daily banking paper, and he did not seem to remember too much about it but I think he thought he heard, he said that was several months ago. I was finally able to locate it. I think it took me two or three weeks to obtain that article.

Q And after the two or three weeks you had in fact obtained it, is that right?

A Yes.

Q The WAll Street Journal sent it to you?

A That is right.

Q And you read it?

A Yes, I read it.

Q And this is it, Government's Exhibit 162?

A Dated November sometime, November 21st, 1969.

Q And after having read that, you circled paragraphs, isn't that right?

A I made some notations on a couple of paragraphs.

Q And you circled the paragraph containing a sentence which set out a practice very similar to the one that you had in fact helped to plan and start?

A I am not certain that I put the circle around it but I think I made the brackets around it, I just do not recall, but the brackets are mine.

Q That portion around which you put that bracket referred to a system substantially identical to the Security National Bank --

MR. BANNIGAN: I object to the form of that question, calls for a conclusion.

THE COURT: No.

A No, I wouldn't say that. When I first read the article, it was not anything in the article that said anything was illegal.

Q Well sir, would you read please out loud the paragraph just prior to the bracketed portion?

A In a speech to the tax executives --

MR. BANNIGAN: I object.

MR. PATTISON: It is in evidence.

MR. BANNIGAN: All right then.

THE WITNESS: "In a speech to the tax executives institute Commissioner Thrower of the IRS recently outlined some of the cynical practices being uncovered by his agents that involve criminal conspiracy amongst politicians and executives to defraud the government."

Q So you say sir there was nothing in that article about it being a crime?

A Cynical practices.

Q Criminal too?

A When I read the rest of the paragraphs there it referred to bonuses which is slightly different than -- considerably different than our practice.

Q Very slightly, wouldn't you say so?

A No, I would say considerably, sir.

Q Sir, a bonus is money given by the corporation to one of its workers on a one-shot basis, is that right?

A A bonus is strictly on a one-shot proposition.

Q And the cynical practice which was criminal according to the IRS chief was that the executive would then have to give this money to the politicians and he only got it with the understanding that he would give it.

MR. BANNIGAN: Objection your Honor.

MR. RYAN: Objection. Is that a question?

THE COURT: That is a bad question, too many questions involved. Rephrase it please.

Q Sir, the article points out, does it not, that the criminal practice was to give an executive a bonus with the view or understanding that they would give it back?

A That is what it says here.

Q And it also alleged that at times the bonus would be more than he would actually have to give back to allow for the income tax?

A Some reference is made to that, yes.

Q Now, the Security National Bank plan was to give continued moneys to its officers as part of their pay checks, $100 a month, right?

MR. RYAN: I am sorry, I have to object to the form of that question.

THE COURT: I will allow that question.

A The officers were receiving a salary adjustment to which they voluntarily agreed to make some form of contribution.

Q Some form of, some form, any form, sir?

A At their discretion.

Q That was left up to each officer, what he would pay?

A Well, as the testimony has shown here in Court, people did various things, some made it, some didn't.

MR. PATTISON: Your Honor, I move to strike the answer.

May I have the question read?

(Question was read.)

THE WITNESS: I think the officers from time to time refused to make contribution to a certain fund and other times they made their contribution $100 a month.

Q Sir, the officers were told to pay $100 a month?

A That was the understanding.

Q Weren't they?

A That was the understanding.

Q There is no doubt about that?

A No, I do not think so.

Q Is it not a fact, sir, that almost every one of them paid exactly $1,200 a year as long as they were in employment?

A I could not confirm that.

Q Have you had an opportunity to go over Mr. Chadwick's records?

A No I have not. I knew there were records but I would not know whether every officer made $100 a month or did not. I would assume that they did, but --

Q They did and it was not left up to them whether they wanted to pay $50 a month or $150 a month or 20 or $5, it was $100, right?

A Well, that was the understanding.

Q And that was what the raise was in fact based upon?

A That is correct.

Q To allow for the $500 extra, right?

A Correct.

Q So this similarity is what caused you to send this article to the law firm, wasn't it, sir?

A No I would say it was not. It was an interesting article. I thought it had lots of information on it. One thing it referred to something that I had never

heard of, I think it was the corrupt practices act, I have never heard of it.

Q You didn't circle that part, did you, sir?

A No. I remember reading it somewhere in the article. I sent it down to Mr. DeGennaro with a notation I would like to talk about this, it was interesting.

Q Sir, mildly interesting?

A (Witness gestured.)

Q But interesting enough for you to make a three week search to find it, right?

A WEll, it interested me as do many other items in the bank. I always made a point of trying to research things that I thought would be important. I always tried to conduct my affairs properly and I wanted to see what this was about.

(Continued next page.)

Q You wanted to make sure that you were in fact conducting your affairs properly?

A As far as I was concerned.

Q So you sent it to the law firm with a note on it, "George, let's talk about this." Is that right?

A "I would like to talk to you about this."

Q And you had already bracketed the portion that you wanted specifically to talk about?

A I thought that was interesting.

Q And there came a time when he called you, is that right?

A That is right.

Q And what did he say about that bracketed portion, sir, that you had sent him?

A Mr. De Gennaro called me in my office, I believe it was one morning. There were two or three people in my office. They were not bank personnel and he mentioned the article. I believe it was sometime after I sent it to him. We talked briefly about it, talked about the method that the bank was using in the form of a club accound and indicated to me that he thought it was best not to have a bank account within the bank and to have individuals draw their own checks and I immediately said to him, "George, I will refer the matter on to the proper person" and thanked him and did not want to

discuss the article with him any more in the presence of the people.

Q Did the fact that these visitors who were in your office, they were not from within the bank, play any role in your choice not to talk about it?.

A No, I do not think so. I don't think that when you have customers in the bank or one thing or another you either excuse yourself and I think I just briefly listened to him and said I would pass the information on.

Q Well, sir, this was the phone call that you had been waiting for for some time, right?

A I think it was several weeks after this article had been alerted to me after June 9 and I assume it took me two or three weeks perhaps to obtain it and I would assume that he replied possibly within a week or so.

Q Did you tell him, sir, "Call me back when I don't have anyone here?" or "Let me call you back again later when there is not anyone here so we can spend some more time on it"?

A No, sir, I did not. I passed the information on to the officer who was responsible for this program, which was Mr. David Dowd.

THE COURT: I must go inside. It will only take me two minutes.

(The Court left the bench for a very short recess.)

THE COURT: All right.

Q Sir, you said that he told you that the account should not be kept at the bank; is that right?

A Yes, he thought it advisable not to have a bank account of that sort and that he recommended it would be discontinued.

Q What did he say about the practice of giving employees money?

A Nothing that I recall.

Q Did you ask him?

A No, I did not.

Q Did you say, "George, this is why I sent you the article?"

A No, I asked nothing to that extent.

Q Does that article say anything at all about where accounts ought to be kept?

A Not as I recall.

Q Did you say to him, "George, this has nothing to do with the article that I sent you which is what I want to talk to you about?"

A Mr. Pattison, I have not had any previous conversation with Mr. De Gennaro about the political affairs club. I have never discussed anything with him. This was the first thing I had brought to his attention and I proceeded to

pass it on to the person that was responsible for that operation.

Q So you had never told him about raises being offered?

A No, I never discussed it, not from me, never.

Q You told Mr. Dowd what he said over the phone?

A Very briefly.

Q That is about the account and Mr. Dowd then obtained, did he not, a copy of the article that you had sent him?

A My best recollection is that I took him a copy and told him about my phone call and suggested that he get in touch with Mr. De Gennaro.

Q Did you tell him, "Mr. Dowd, I sent him a copy of this article and he called me back and told me something that had nothing to do with this article"?

A No, I just made reference to his conversation about his suggestion that perhaps we should not have a bank account. It concerned me a little bit because only two or three months before the Long Island Public Affairs Club had been opened up and I had been told then that club had the approvel of Counsel. I think Mr. Dutrovich told me that. I assumed he knew all about it. He confirmed it and I passed it on to Mr. Dowd and suggested that he get in touch with Mr. De gennaro.

Q So when you say it had approval of Counsel, who do you mean?

A Well, I would certainly assume it was Mr. Gould's firm. They were the counsel for the bank and when I was told it was approved by counsel by the senior officer of the bank I certainly would assume it would be the bank's counsel.

Q What about the in-house counsel, Driscoll?

A The in-house counsel, as I saw it, was strictly for the purpose of handling the day to day things that came up and the branches, about safe deposit problems, checks, someone wanting to file and affidavit for loss of passbook, that type of thing that would constantly be coming up in the sixty or seventy branches, that basically was the function of in-house counsel.

(continued next page)

Q Sir, you knew, did you not, that Mr. Driscoll had been asked for a memo?

A No, I did not.

Q On the topic of Section 6 of the U.S. Code?

A No, I did not.

Q And you knew, did you not, sir, that the Long Island Public Affairs Club had been a subject of a memo Dutra sent to in-house counsel, Driscoll?

A No, I did not.

Q Defendant's Exhibit PPP, have you ever seen that before?

A I saw it at this trial, sir, yes.

Q Prior to that, you never saw it?

A No, sir.

Q When you said that Mr. Dutra has told you that he had approval from counsel--

A He made mention to me that they were going to charge the format of the club, they were going to have a Long Island Public Affairs Club, I think he mentioned the name, and that it would be better to have it that way.

I think Mr. Dutra also mentioned something about getting other people to participate in the club's affairs, but it was again offhand conversation.

Q And that counsel approved, right?

A I'm not sure that he mentioned any reference to any in-house counsel. I think it was just a reference to the fact that it was permissible to have that account and he made -- when he made the comment I would assume it came out of Mr. Shea's office.

Q Sir, relative to the in-house lawyer that you had, he worked for the actual bank, didn't he, sir, Driscoll?

A Yes, his function was for the bank.

Q And he was hired by the bank, not by the Shea firm?

A Originally.

Q Right.

A Up until the time that he reached retirement.

Q Mr. Clifford hired him; isn't that a fact, sir?

A I believe he did, to the best of my recollection.

Q And then there came a time when he reached 65 years of age, Driscoll; is that right?

A Correct.

Q And the policy as you said, was when anyone who worked for the bank reached that age they would have to leave; is that correct?

A That's correct.

Q So rather than hav Mr. Driscoll leave, the

Shea firm was asked if they would put him on their payroll and the bank would reimburse them; isn't that what occurred, sir?

A Mr. Driscoll had an assistant and I think his assistant wasn't capable of handling the functions that Mr. Driscoll did, and I think that decision probably was made by the Shea firm, that they would retain him, which they could and they would have him sit in the bank as the in-house counsel.

Q But he never worked for the Shea firm, in fact, did he, sir? He wasn't hired by them?

A He certainly worked for them when he was 65.

Q The bank repaid the Shea firm for his services?

A The Shea firm could have billed the bank for his services, but he would be working under the direction of the Shea firm. He wouldn't get any fringe benefits, no bonuses, no insurance benefits.

Q Sir, Mr. Driscoll's presence there in the bank as an in-house counsel had nothing to do with the Shea firm; is that right?

A I don't think I can agree with you on that, Mr. Pattison.

Q Well--

A I would think he would get his directions from Mr. Shea's firm.

I would assume he would be in contact with them.

Q Sir, he wasn't hired by them, was he? They paid him as a favor to the bank.

A Well, it was a solution to the bank's problem. Let's say it that way.

Q All right. Now, do you recall the time in 1966 when Mr. Barrie came to you and told you about purchasing stamps? Do you recall that?

A That's that item about 500 stamps, $500 worth.

Q Well--

A Yes, he did.

Q Isn't it a fact you told him, "I don't want to hear about that"?

A When I returned to the bank, I believe it was the date following what took place between him and Mr. Clifford.

Mr. Barrie came into my office and told me what took place, and I said words to the effect, "George, don't bother me with that. I don't want to hear about that," but I did want to hear about it and I put it down in my desk calendar.

I went downstairs that same afternoon to Mr. Clifford's office. Mr. Clifford was out of the bank,

and his secretary was there.

Q Who was that?

A Mrs. Solomon. She has passed away since. She asked what I wanted and I said I wanted to speak to Mr. Clifford on a matter.

She said he wasn't there and I said I'd stop down later.

I went down the next day or the following day and asked for Mr. Clifford and she said he was out of the bank and would be out of the bank for a couple of days. She said, "Is there anything I can do to help you?"

I said,"I don't think so. I just wanted to ask Mr. Clifford about a matter of postage stamps," and she said, "That's all being taken care of. That's a personal matter," she said, "and it has been resolved," so I assumed it had been, and tnat was the end of it.

But I went down purposely to see Mr. Clifford because I wanted to know what it was about.

Q Sir, why did you not let Mr. Barrie tell what he knew about it?

A He did tell me that he had been asked to send 500 stamps to some individual, I don't know who it was.

Q To a person or to a club?

A I don't recall.

A 2611

Q Political club?

A Send $500 in stamps and he said apparently 2500.

Q To whom?

A I don't know.

Q To whom?

A I don't know. I don't recall.

Q Did he tell you to what type of an organization?

A No, it's 1966, and I couldn't recall that.

Q Do you recall knowing, when you went to see Mr. Clifford about this, that the stamps had gone to a politician?

A No.

Q So if they had gone to a charity or any other group there wouldn't be anything wrong with that, would there?

A No.

Q So wasn't it a fact that you put it in your desk book, diary, to see it because you knew--

A I wanted to know what it was about. I thought it was unusual that he would go to Mr. Barrie. Apparently he went to see me, so Mr. Barrie indicated that, and I was out of the bank and he must have discussed the matter with Mr. Barrie and Mr. Barrie apparently did what he asked.

Q Did Mrs. Solomon, when you went to see her and talked to her, you have told us what she said.

A Basically as I recall.

Q Did she also tell you that Mr. Barrie was asked by Mr. Clifford to get and keep stamps and send them out up through 1970?

MR. NAFTALIS: I object. There is no such evidence in the record. This is a conversation in 1966 and he is asking something about 1970.

MR. PATTISON: Did she at any later time?

THE COURT: There is no evidence of that.

MR. NAFTALIS: There is no evidence of that. I object.

THE COURT: Can you answer that, Mr. Powell?

A I would say absolutely not.

Q So far as you know, this was the only incident?

A The only thing that was referred to me.

Q Sir, did you ever know where those stamps went?

A No, I don't recall ever hearing where the stamps went or to whom or a fund or what.

Q Political--

A I have no recollection of where they went.

Q Now, you have, have you not, sir, back in 1968 or 1970, that the Personnel Department make a record on the Vessey cards, some note indicating what the $1700 raises were for. Do you recollect that?

A Mr. Brogan came to my office on some occasion and discussed some matters pertaining to the Personnel Department, and one of them was there had been so many new officers hired in the bank that it appeared that some of them had not been reported. So of these could have happened before he took over the job. Some of them were perhaps taking place--

MR. PATTISON: I move to strike this. I am just asking about the asterisks.

THE WITNESS: Yes.

Q Did you discuss that with him?

A That was discussed. I talked to Mr. Brogan about the salary adjustments.

He discussed it with me and I told Mr. Brogan that I felt very strongly that the Personnel Department should maintain some record as to what officers had been receiving these adjustments.

I did not want those adjustments to ever interfere with any future merit increases that an officer might be entitled to. It would be very easy for some

senior officer to make a comment that so and so was receiving $2200 and that's enough.

I thought it would be very important to know, at least that some of the money was used for some other purpose other than earmarked for it and I wouldn't want him to be penalized for that.

I suggested that Mr. Brogan maintain some record in his department as to who these officers were.

Q Did Mr. Brogan make such a record?

A He did, apparently, but I did not instruct him to put any asterisk on any of the Vesey cards.

Q Did he tell you what he had done in order to put into effect your order?

A I never recall him making any indication, and I had not seen the Vesey card records. I didn't have access to them. I could have. I think Mr. Brogan might have brought some of the Vesey card records to the officers' salary review committee but I had no opportunity to review those records.

Q You realized that the $1700 raises never did cause any trouble or mixup? In other words, never was any mixup, misunderstanding as to what the $1700 was for at any later meeting, right?

A I don't think so.

Q So the problem had been solved, right?

A I think so.

Q The problem that you feared?

A Right. It didn't interfere with future salary adjustments.

Q There was a marking and everyone knew?

A Apparently he had, but I did not know that he had, asterisks per se to those Vesey card records.

Q Did you tell him in words or effect that the marking, whatever it was, should be confidential?

A Absolutely not.

Q So far as you knew, he could make up a list entitled "Political Contribution Raises"?

A I would have hoped he maintained a list of the names who had been receiving the $1700 adjustments. That was the purpose of my instructions to him.

Q So the choice to put that type of a mark on the card was his?

A Apparently. I believe he also, at the time of the salary adjustment, he even made a split of the portion that the raise was for that purpose and the other for merit. I think I have seen that in some of the evidence submitted here.

Q That was only with the 1/8/68 raises; isn't

that correct?

A It could be; I'm not sure.

Q The 1970 raises, at the start of 1970, was just totals, just the totals were put down there; isn't that right?

A I would have to look at the Vesey records on that.

Q Let's take a look at a few of them, sir, if we might. Mr. Brogan himself, 1/8/68, got two separate raises on that date; is that right?

A He got $1700 on January 8, 1968.

Q And also-- That's the carry forward. I'm sorry. Dickerson,--

A Oh, January 8th Mr. Dickerson received $1,000 and $1700.

Q Two separate entries were made; is that right?

A Yes, Mr. Brogan did that.

Q Mr. Fretz, the same thing occurred; is that right, two separate entries?

A Yes.

Q And that was as per your orders?

A I didn't instruct him to break it down. I instructed him to maintain a record of those people who were receiving those type of adjustments and I wanted him

to have them for future reference purposes, the breakdown of them I assume was part of his decision. Nothing wrong with that.

Q There came a time, sir, when that system was changed; is that right?

A Yes, and I believe it was changed, if I recall, Mr. Brogan before this court testified that I believe it was Mr. Dutra who told him they were taking over those functions and it would be no longer necessary for him to maintain records pertaining to that. That's my recollection of what took place in this court.

Q So he could then thereafter lump the raises together in one total amount; is that right?

A I would assume that he might have done that. I would have to look at these.

Q If you look at some of the 1971 raises, sir--

A I'm not aware who were members of the club.

Q Mr. Casey, Robert Doud, Merrolla, Wulffleff, you said if I could give him some names he would look for them.

A Robert Doud's name is in one notation. That's the only one that I participated in.

Q But at that time Brogan was still acting under your orders; isn't that right? The Personnel Depart-

ment was under your--

A Mr. Brogan continued to be under my direction for administration but the information that I referred to that took place in this court, as I understood it, was a conversation that he may have had with Mr. Dutra, if I'm not mistaken.

Q And you have no reason to think that there would be anything other than accurate about that, when he relates what transpired?

A No.

MR. BANNIGAN: I object as to what he thinks is accurate. That's for the jury to determine.

THE COURT: Yes, I'll sustain it.

Q Now, sir, did he ever tell you that asterisks were being placed on there, ever?

A I don't recall him making that comment. No, sir, I don't.

Q Now, sir, there came a time, didn't there, when the asterisks were taken off, were erased?

A I have heard, it was in this trial, I believe, that the notations had been removed, but I had no knowledge about that.

Q Well, you can see it, can't you, sir, if

you look at every $1700 raise, the erasure marks are apparent, isn't it?

A Is this something -- I don't know what it is.

Q The rough portion of the card, sir.

A Possibly. There must be a better one than that.

Q How about that?

A I don't see anything there at all.

Q That's right. As a matter of fact, part of the line is gone, isn't it, sir? The green line running across the page has been erased, hasn't it?

MR. COHN: I object to it.

A No, the green line has not been erased, because it doesn't continue on any of the forms. I stops at this line.

MR. PATTISON: Your Honor, I would ask this be passed around.

THE COURT: He sees it differently than you do.

MR. PATTISON: Right, and I would like it passed around, refers to the $1700 salary increase on 1/8. I ask that a few more be passed around, your Honor.

Q Do you see on Mr. Hart's card an erasure?

A There is a break in that line. A slight break as if--

Q An erasure?

A Something might have taken place, that's correct.

Q Mr. David Doud's card. Do you see an erasure there?

A It would appear there is something there, yes.

Q Mr. Knoess' card, that card?

A There appears to be some structural changes there.

Q Now, sir, structural changes. Do you have any idea how the erasures were put on the cards?

A No, I don't.

Q And why?

A No, sir.

Q Did anybody ever talk to you about it?

A Never.

Q Isn't it a fact that you told Mr. Brogan to get those marks off there?

A Absolutely not.

MR. PATTISON: Should I wait until the jury finishes looking at the cards?

THE COURT: Yes, you may.

(At this time the jury proceeded to examine exhibits handed to them by Mr. Pattison.)

Q All right. Now, Mr. Powell, you said earlier that Mr. Casey and you had had a talk, meeting, discussion, concerning his status as an office holder, politician?

A Correct.

Q Is that right?

A Yes.

Q Now, sir, you told him that you didn't like it?

A I certainly did.

Q Was he the only officer, office holder in the bank at that time, sir?

A I believe he was.

Q Dennis Dougherty?

A I think that was on a subsequent date, to the best of my recollection.

Q Who was he, sir?

A Pardon me?

Q Who was he? Would you please tell us.

A Who was who?

Q Dennis Dougherty.

A Dennis Dougherty I believe was assistant vice resident and in the business development section, and he

was performing the usual functions of developing new account business for the bank.

Q And he was also a politician; is that right?

A I'm not sure whether it was before or after Mr. Casey's joining the bank.

(Continued on the next page.)

K fols

Q Well, you knew, sir, did you not, that at the same time he worked for the bank he held an office --

A Yes.

Q A public office, political office?

A Yes, I remember the time that that was brought up.

Q Did you tell him the same thing, sir?

A No, I mentioned it to some of the Board members when it was discussed, I was not very much in favor of Mr. Dougherty holding a position in the bank at the same time holding a legislative position, if he were successful in winning the election.

Q Well, did he ever tell you that he had obtained an opinion from the Attorney General of the entire state, from the State of New York, and that that was the procedure?

A You are now referring to Dougherty?

Q Yes.

A No, I don't remember him saying that but I do recall Mr. Shea in a meeting saying that the matter had been discussed and so long as Mr. Dougherty refrained fro participating on certain committees that might affect the relationship of the bank, that there appeared to be no objections, and I believe he was permitted to run for that office.

Q Mr. Casey thoug. told you that he had obtained

an opinion from the Attorney General; is that right?

A No. Mr. Casey when he was first introduced to me as coming to the bank, I met Mr. Casey out in the hall and I told him, "I want to tell you my best judgment is that you should not maintain the relationship you have with the Town of Huntington, I think you should devote your entire time to the best interests of the bank." Subsequent to that, Mr. Casey did proceed, apparently, to write to the Attorney General and did get something from them and I believe that it was he who showed it to me, but it didn't change my opinion, I did not like that relationship, and I think he knew it.

Q In other words, you felt it was wrong?

A I just didn't think that a man should be in that position, attending meetings which he probably had to during the day and at other times -- well, that could detract from his services to the bank as a full-time officer, such as I was doing, I devoted my full time to the bank and I thought he should be.

Q And in fact, the fact that he did write for an opinion didn't change that?

A It didn't change my opinion.

Q You thought, you still thought it was bad?

A I still thought it was bad.

Q Sir, isn't it a fact thatwhether you have an

opinion or not, if something is bad, it is bad and no opinion from anyone will actually change it?

MR. RYAN: I object to that, your Honor, it is argumentative.

MR. PATTISON: I think it is perfectly relevant.

THE COURT: I will allow it.

THE WITNESS: Can I answer it?

THE COURT: Yes, sure.

A I think legally you can get an opinion, I am sure many times that legal opinions are given, and it may make it legally correct but in my eyes it may be morally incorrect.

Q You knew that banks cannot make political contributions?

A It was a known fact that a bank is not supposed to make political contributions.

Q Right, direct or otherwise; right?

A What do you mean by --

MR. BANNIGAN: I would move to strike the word "otherwise," It is a little narrower than that.

THE COURT: "Otherwise," is no problem, yes.

BY MR. PATTISON:

Q Sir, if a bank took its money and gave it to a politician, that would be a political contribution?

A I would assume it would be.

Q And that would be wrong?

A I assume it would be wrong.

Q And if a bank gave its money to another person for the specific purpose of having that person give it to a politician, that would be wrong, too?

A That becomes his own money, that is his funds.

Q Sir, if --

MR. RYAN: He answered the question.

THE COURT: He just answered.

You asked the question and he answered it.

MR. RYAN: He answered it.

Q If it is his funds; right?

A It is --

MR. RYAN: I will object to that.

THE COURT: He took your question and he answered it.

You can ask him another question but you can't argue that question out.

Q Sir, there came a time when an anonymous letter was written relative to the bank's political contribution system, right?

A That is correct.

Q Now, I show you now Government's Exhibit 171

in Evidence. A copy of that letter was shown to you; was it not?

A Yes, it was.

Q Mr. Langdon came to the bank; is that right?

A I believe -- I believe on February 19, I believe 1971.

Q Now, you read that letter; is that right?

A Yes, I was called down to Mr. Clifford's office by his secretary and told Mr. Langdon was there and would I come down, which I proceeded to do.

Mr. Clifford was there and Mr. Langdon and I believe Mr. Dowd, when I went in. I said hello to Mr. Langdon, I have known him for many, many years, and his father, and we exchanged pleasantries.

There was some discussion going on and I was handed the photostat of this letter, I believe it was not the original, I don't recall the original.

THE COURT: We will take a recess now at this point.

(At this point a five-minute recess was taken.)

MR. PATTISON: Before the jury comes in, let me say I believe I have about another half hour or so, that is all. Now, we have been informed that the bank would like to call one of the lawyers as a witness.

THE COURT: Which lawyer?

MR. BANNIGAN: Mr. Naftalis is whom I would like to call.

THE COURT: You had better read the Canons of Ethics.

MR. BANNIGAN: I have read it.

THE COURT: Just read it again.

MR. PATTISON: There will be lengthy argument about this and --

THE COURT: No argument, no argument.

I won't listen to argument.

You cannot place an attorney on the witness stand, you couldn't put the prosecution attorney on the witness stand.

No argument, the Canons of Ethics are very explicit on that.

MR. BANNIGAN: I except, your Honor.

MR. PATTISON: Your Honor, I would also like, though outside of the presence of the jury, to have an offer of proof.

THE COURT: Yes, quickly.

MR. BANNIGAN: I would like to make an offer of proof as to what he will testify to.

THE COURT: I don't care what he will testify

to, it is collateral. He wasn't there at any time. The charge is made against this bank and he wasn't their lawyer, he had nothing to do with it, it can only be collateral.

MR. BANNIGAN: It is not collateral?

THE COURT: It is not?

MR. BANNIGAN: No, it is not, it goes to what a witness testified to in this courtroom.

THE COURT: A lawyer cannot be placed on the witness stand and counter what another witness has said in the case or has testified to.

Did you really read the Canons of Ethics?

MR. BANNIGAN: I know they don't favor it, I am not in favor of it myself.

THE COURT: All right, that is what I want to hear.

MR. BANNIGAN: I am not in favor of it myself, I don't like it.

THE COURT: I will deny it and I will take my chances on appeal without having a hearing.

MR. BANNIGAN: You don't want an offer of proof?

THE COURT: I don't even want to hear about it, no.

MR. COHN: Your Honor, just to make the record

complete, I have reduced to written form the material that I put on the blackboard.

May I now ask that my written form, a copy of which I am giving to Mr. Pattison, be marked the same number as that exhibit, so we can make it a part of the permanent record of the case?

I don't honestly remember what the number was.

MR. PATTISON: It is on the board, there is a yellow ticket, I don't know if it is in this case.

THE CLERK: It is not:

MR. COHN: I think if you go through the memorandum, you will find it.

MR. PATTISON: We don't object, your Honor, but I think it can be done after we break today, but we don't object.

MR. BANNIGAN: Before we break, I would like to make an offer of proof. I understand your ruling but for the record I would like to make the offer of proof.

MR. PATTISON: Your Honor, when I get through, maybe we could let them go home and then we can hear that then.

THE COURT: All right.

Now bring in the jury.

Let us speed it up a little bit.

MR. PATTISON: Yes, I will, your Honor.

(At 3:45 the jury took it's place in the jury box.)

THE COURT: All right.

BY MR. PATTISON:

Q Sir, a copy of this letter, Government's Exhibit 171 in Evidence, is what you read; is that right?

A Yes, a photostatic copy.

(Continued on next page.)

Q And that letter does allege, does it not, that officers were given raises out of which they had to pay moneys back to the bank, in effect.

A It makes reference to a supplemental raise.

Q Yes.

Now, now Mr. Langdon went over that letter, didn't he, sir?

A Yes. When I went into the meeting, Mr. Langdon was talking about the subject of the letter and I was proceeding to look at it with great interest as to who the writer may be --

Q Sir, the fact that he passed out the letter indicated to you that that was why he was there; right?

A The contents.

Q Yes.

And was Mr. Langdon told that supplemental raises had indeed been given?

A No, I never heard any conversation to that effect between he and Mr. Clifford as to salary adjustments.

Q So he was not?

A There was no question asked, not to the best of my recollection, while I was reading the letter. The reference that I heard was to about reimbursement, I remember hearing that word specifically.

Q Mr. Clifford said that, sir; is that right?

A Yes, I believe Mr. Clifford did all of the talking.

Q And what question was asked, what brought about that answer?

A I don't think I could say with any certainty because the bulk of my attention was to the handwriting in this letter which appeared quite familiar to me.

I had briefly glanced over the letter, I was concentrating on the handwriting, and I remember hearing comments, off and on, but I remember Mr. Clifford stating that there was no reinbursement made to officers. The word "reimbursement" is what sticks in my mind.

Q Sir, did you tell Mr. Langdon about the raises?

A No, I did not.

Q And what about one of the other charges made in that letter, sir, postage, stamps and allegations that stamps were used to make political contributions?

A There was some reference as to that but I had no knowledge of that, there is nothing that I could add to that, I know nothing about it.

Q Now, sir, didn't you know that Mr. Barry had indeed contributed postage stamps?

A No, I didn't.

Q Under orders?

A I did not.

The reference that you made as to the $25 matter back in 1966, I had been assured by Mr. Clifford's secretary that that was a personal matter and had been taken care of Mr. Clifford, and I accepted it as such.

Q Mrs. Solomon told you that that was a personal matter?

A Of Mr. Clifford's and he had taken care of it.

Q What did he say about that, Clifford?

A I didn't talk to Mr. Clifford about it.

Q In the Langdon meeting, what did he say?

A I think Mr. Clifford made a denial, and as I recall he asked Mr. Dowd and possibly myself, and I said I have no knowledge of it, period.

Q Now, sir, you say that you looked at the letter to see if you could recognize the writing, and you in fact; is that right?

A Well, I was pretty sure that I knew the writer.

Q Who --

A I didn't make any comment at the time, I continued to look at it, I would hate to be the one to indicate the name of the writer if I wasn't certain.

Q Why, sir, why?

A Well, I wouldn't want to accuse anybody of writing a letter.

Q Accuse him of what, sir?

A Of writing an anonymous letter --

Q Well --

A It was an unsigned letter.

Q Yes?

A An unsigned letter generally means nothing to most of us, we don't take much -- don't give much consideration, but this had been brought in by Mr. Langdon.

Q Doesn't it depend on what the letter says, sir?

A I think that would have a bearing on it, yes, sir.

Q So you didn't want to accuse the author of the letter?

A I would not do that unless I was absolutely certain.

Q Well, who do you think wrote the letter, sir?

A I was pretty certain that it appeared to be the signature and the handwriting of Harry Melsha, the vice president in the bank.

Q And you were in fact right, you know that now?

A It has been confirmed.

Q Sir, you told Mr. Langdon, didn't you, that you

knew who it was that wrote that letter?

A I cannot recall whether I mentioned that name at the meeting or not.

Q Whether you mentioned any name or not, you told him that you --

A I thought I knew who had written the letter.

Q And did you tell him who?

A I am not sure whether at that meeting I mentioned his name or not, I could have.

Q Well, after, did you tell Mr. Clifford or Mr. Dowd that you thought you knew?

A I told Mr. Clifford definitely that it was Harry Melsha, I was certain, fairly certain that it was that of Harry Melsha.

Q Now I would just like to show you, Mr. Powell, Government's Exhibit 174 in evidence, Mr. Langdon's report, and ask you to look at the last sentence and see whether that refreshes your recollection as to whether you mentioned anything about it to him.

A It doesn't say that I mentioned the writing being that of Harry Melsha.

Q Right, did you say that you thought you knew who it was?

A I thought that I knew who it was and that is to

the best of my recollection.

Q Now, after you told Mr. Clifford you were fairly certain that it was Harry Melsha, what did he say to that?

A At that time?

Q Yes.

A I'm not sure I can recall exactly his reaction at that moment.

Q Well, there came a time, didn't there, sir, there came a time, didn't there, when Mr. Barry and Mr. Dowd were called to your office?

A That is right.

Q Subsequently, right?

A Yes.

MR. COHN: May we know which Dowd, Robert Dowd?

MR. PATTISON: Robert Dowd, Robert Dowd.

THE WITNESS: Correct.

Q Whoever these men were, weren't they Harry Melsha's bosses; right?

A At that time I think Mr. Melsha was working in another area of the bank, I think he was not under Mr. Barry's direct supervision.

Q Well, according to your chart he was, wasn't he sir?

A Not at that time, I think he was employed in the Business Development Section, he had been assigned to that. Originally Mr. Melsha worked in the Controller's Department and Mr. Clifford had asked for an assistant in connection with the handling of some of the major accounts he was bringing into the bank and I volunteered to let him have the services of Mr. Melsha.

Q He had worked for Mr. Dowd, hadn't he, sir?

A Which Dowd, which Mr. Dowd?

Q Robert Dowd, Robert Dowd.

A Not directly, he worked for Mr. Barry. Mr. Robert Dowd was in the Accounting function of the bank.

Q And will you tell us, please, what was said when Mr. Barry and Mr. Robert Dowd and Mr. Clifford and you met?

A Mr, Clifford had asked me to call them over to the bank, which I proceeded to do, and they were there I would say within a half or a quarter of an hour.

Mr. Clifford came in the office and asked them if either one of them might have written the letter, and they both denied having written such a letter.

Q Sir, you had told him who had written the letter; is that right?

A I told him I thought that MR. Melsha had

written the letter.

Q You told him you were pretty certain?

A Pretty certain. I am not a signature expert but it appeared to be very similar to his.

Q Was Melsha called to come down to the meeting, sir?

A No, sir, not to the best of my knowledge.

Q Sir, can you explain why the man whom you said you thought or were pretty certain wrote the letter wasn't called but his bosses were?

A Well --

MR. RYAN: Before he answers the question that assumes --

THE COURT: What is that?

MR. RYAN: He is assuming certain things, certain facts which the witness doesn't agree with as to who his bosses were at that time.

MR. PATTISON: Your Honor, according to this chart, according to the chart Mr. Melsha worked under both Mr. Barry and Mr. Dowd.

MR. RYAN: He had worked, he was under Mr. Barry's supervision, according to the chart.

MR. PATTISON: Your Honor, Mr. Melsha testified that he in fact did and the chart supports that.

THE WITNESS: What date?

THE COURT: Why is there argument on a thing like that?

MR. PATTISON: Well --

MR. RYAN: All right.

BY MR. PATTISON:

Q Sir, can you explain why Mr. Melsha wasn't and Mr. Barry and Mr. Dowd were present?

A As I recall, Mr. Langdon did not leave a copy of the letter at the time of the meeting, that is my best recollection, I believe the bank did receive a copy of the letter, that is my best recollection, and --

MR. PATTISON: I would ask that the question be read again and answered, please.

MR. RYAN: The witness hasn't finished his answer.

MR. PATTISON: Sir, would you like to add anything?

THE WITNESS: I would like to hear the question.

(Cont'd on next page.)

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BY MR. PATTISON:

Q Well, maybe just to save time, can you tell us why Mr. Melsha wasn't called down and Mr. Barry and Dowd were?

A I think Mr. Clifford wanted to ascertain whether someone else might have written the letter, and I think he wanted to see whether perhaps Mr. Barry or Mr. Dowd, I assume, had written the letter, which is what he asked them.

Q Did you ever tell him, "Why not call Harry Melsha down and ask him whether he was the one who whom you thought it"?

A No, we had no discussion on that, we had discussed in Mr. Langdon's meeting that whoever it was the bank was not going to take any action against him for having written the letter, and I believe Mr. Langdon's letter made an indication of that.

Q Yes.

So you called Barry and Dowd down?

A Mr. Clifford called them down.

Q Yes, and asked them whether they had written the letter?

A Whether they had written it, yes.

Q And if they had, sir?

A Then I would have been wrong.

Q And they would have been called in to the chair-

man of the board's office; right?

A Well, they were already there.

Q Yes.

And you didn't want to call in Melsha?

A It was not my prerogative to call in Mr. Melsha.

Q Sir, after men, Barry and Dowd, were asked whether they wrote the letter, what else was said?

A Nothing, I think the meeting adjourned very quickly and they went back.

Q In other words, they were just asked that one question?

A The basic question, I don't think there was any discussion of it.

Q Couldn't that --

A It was very short, very quickly.

Q Couldn't that have been done over the phone, sir?

A I suppose so, but Mr. Clifford asked them to come into the office.

Q Just to ask them whether they had written the letter?

A That is all, just to have them come in, "I want to talk to them" and he came into the office with his usual vim and vigor and asked them point blank, each one,

"Did you write an anonymous letter," and each one emphatically denied having done that.

Q And then they left?

A Almost immediately.

Q How long did you say it takes to get from where they were to where this meeting was?

A Oh, 20 minutes, good travelling time, it's about 8 miles, maybe 25 minutes.

Q Now, sir, in May of 1972 retirement occurred for you; is that right?

A Well, I thought it did.

Q You stayed on with the bank, didn't you, though, sir?

A Yes, I was, I was asked to stay on as a consultant to the bank and to come in two or three days a week and be available for any functions that the Board of Directors would ask me to do, only the Board of Directors could ask me to do functions, if anyone else did it had to be an official writing by the Board of Directors.

Q And, sir, there came a time afterward when you still kept on making payments to the club; is that right?

A No, I made no further payments to any political organization after November in 1971, I believe.

Q Sir, you issued checks to Mr. Shea, didn't you?

A Yes, but those are not political contributions.

Q You knew that it was paying back a loan which had been for that; right -- is there any doubt about that?

A Well, Mr. Chadwick alerted me to that fact when I was concerned about him asking me.

Q Right.

And Mr. Shea's loan was in effect the seed money, as it were, for the club, the Long Island Public Affairs Committee?

A I believe it was the was the initial deposit to the Long Island Public Affairs Club, as I was advised.

Q The funds of which were used for what, sir, political contributions?

A Disbursements for the purchase of tickets.

Q And so you knew after you changed your job, as it were, that the club still went on, it existed; is that right, sir?

A Yes, I did.

Q You knew that those officers whom you had brought into the club still were making $100 a month payments, right?

A I couldn't say with certainty, I don't know who was still in or who was making contributions.

Q Well, for instance, sir, when you made your

loan to the club, the $1000 loan -- is that right?

A Yes, I made a $1000 loan in June of '72 at the request of David Doud who said that they were short of funds and would I be good enough to help them, and I discussed it a few minutes, and I said, "Well, I would want to be paid back very shortly because I will be needing the funds for tax purposes," and he assured me that I would have it back in a month of two, which I did.

Q And some of the officers that paid you back were some of the ones whom you had brought into the club some four or so years earlier?

A As I recall it, $700 of the thousand came out of the the Arthur Chadwick Fund and my deposit ticket for August 23, which was for the final $500, included a $200 check for Mr. Chadwick and 3-$100 checks, I think one of them was Mr. Groskoph, and I didn't have anything to do with Mr. Groskoph going into the club and I felt one might have been Mr. George Barry, I am not sure, the other --

Q Would this refresh your recollection, I'm showing you what has been taken from --

MR. KATZBERG: Government's Exhibit 87.

Q -- from Government's Exhibit 87 of the Chadwick Record showing that the checks were from Mr. Fretz and Mr. Barry and MR. Groskoph?

A I remember the two.

Q You knew they were still in the club and still making payments; right?

A At least Mr. Fretz and Mr. Barry, whom I had asked, that is correct.

Q And you knew also, sir, that the club had grown over the past five or so years from 20 officers to somewhere in the neighborhood of approximately 47?

A No, that would not be fair to say, that I was not aware of, the number of people who had been asked to participate in the club. I knew that there had been people asked but on the list of the subpoena, of those 40 names, over half of the people there I never knew were members of the club, I had not been consulted, I had no contact with the club whatsoever.

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Q Let me just ask you aside from knowing specifically who, you knew the club was much larger than it was?

A Larger?

Q Than it was back in 1967?

A I heard they were asking people to join.

Q And you knew, did you not, that the purpose of the club was the same as it was?

A I would assume.

Q You had not heard anything contra?

A I did not hear anything either way.

Q And you certainly had not either at that time that you left your day to day operations at the bank or at any time thereafter order that the club be stopped?

A I notified Mr. Clifford, Mr. Dowd and Mr. Chadwick and there is a notation in my diary in late December 1971 that I was no longer participating in the club as my retirement was imminent.

Q May I have that diary?

MR. RYAN: 1971 -- certainly.

Q While that is being looked for, Mr. Powell, that was with reference --

MR. RYAN: I have it Mr. Pattison.

MR. PATTISON: May I ask it be marked?

THE COURT: Mark it.

THE CLERK: One small box marked for identification Government's exhibit number 191.

Q Aside from telling them that you would not be paying any more, you knew that the club was still going on?

A It was at that time.

Q And you issued no orders that it be stopped or cease or anything else?

A I told them that I was ceasing to be a member.

Q You were, sir.

MR. PATTISON: Your Honor, I must move to strike the answer.

Q Did you ask them to stop the club?

A No, I did not.

Q All right. Now, as a matter of fact, sir, you knew the club kept making payments, getting and making, getting payments and also making payments up to approximately 1974?

A No, I knew up to the time I gave them a one thousand dollar check in 1972. There were never any conversations with me about future contributions, about participants or anything. No one ever consulted me after my retirement in that matter.

Q Did you ever hear it ceased, that is, stopped?

A No, I had heard nothing pertaining to it whatsoever.

Q You had no reason to think it stopped, right?

A Either way.

Q By the way Mr. Ryan offered into evidence, I believe, the minutes of the executive committee meetings of the Board?

MR. RYAN: Examining committee.

Q Examining committee, right?

A I believe that was what that book is.

Q You were present at many of these meetings, sir, were you not?

A I was not a member. All of the official members of the examining committee under the by-laws of the bank consisted of directors. Mr. William Shea was the chairman and it would be the policy of the bank for one, two, or three officers to sit in occasionally at meetings and listen to what was taking place.

Q And amongst the various topics talked about was Mr. Landon's orders?

A That would be the controller.

Q Mr. Langdon is mentioned by name; isn't he?

A I would have to look. I assume he would be.

Q I s there any mention in there at all about Mr. Langdon's visit to the bank concerning the anonymous letter? Sir, to save time, would you accept the reference, sir, that

not a word appears in that book, the minutes of that group, concerning Mr. Langdon's visit?

A I don't see any reference to it, either shortly before or after that date.

Q Was the Board told about Mr. Langdon's visit and about the charges that he had been there looking into?

A The Board of Directors would review the Examiner's report following the receipt of it. It took approximately --

MR. PATTISON: Your Honor, I would ask that it be stricken.

THE COURT: Yes, it is not responsive.

Q To your knowledge was the Board of Directors ever told about Mr. Langdon's visit concerning the letter?

A I do not recall it.

Q You were Secretary of the Board at that time?

A That is right.

Q Weren't you?

A That is right.

Q And you were a member of the Board, too?

A At that time?

Q In 1971?

A Yes, that is right.

Q Did you ever bring it up at any meeting of the Board?

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A No.

Q Did anyone else ever bring it up at any meeting of the Board?

A No. The meeting seemed to be resolved and Mr. Langdon was satisfied with the meeting. That is the last anyone ever heard of it.

Q Mr. Langdon was satisfied, did you say?

A I never heard anything from Mr. Clifford or anyone else after Mr. Langdon visited the bank.

Q The fact you had not heard anything, that meant to you that he was satisfied, is that right?

A I assumed he was.

Q Based on what he had been told, is that right?

A And apparently, I am not positive of this, but I believe I recall some indication that he might have talked to Mr. Travers, I am not positive about that, but Mr. David Dowd had told me that the plan the bank reviewed had apparently caused no objections.

Q That Mr. Langdon's office had approved it?

A Or at least he in person had no complaints about it.

MR. PATTISON: I have nothing further.

REDIRECT EXAMINATION BY

MR. RYAN:

Q Mr. Powell, with respect to the diary concerning the communication with Mr. Clifford and Mr. Dowd and Mr. Chadwick about withdrawing from participation in the program, can you find it for us?

A It should be in December -- yes, December 27, Monday.

Q Would you read it to the ladies and gentlemen of the jury?

A "Note to PJC, DD, Chadwick, re discontinuance of contributions to the fund."

Q It was after that date that you told Mr. Clifford, Mr. Dowd and Mr. Chadwick that in view of your retirement you were no longer going to participate in the program; is that right?

A That is right, and in addition if my memory serves me correctly I prepared a memorandum to that effect.

Q Had you made an attempt to try to locate that memorandum?

A Yes, I did, and unfortunately a lot of records in the bank due to the sale of the bank cannot be located.

MR. RYAN: Thank you very much, Mr. Powell.

THE COURT: Anyone else?

MR. HAFTALIS: I have a few questions, your Honor.

CROSS EXAMINATION BY

MR. HAFTALIS:

Q Mr. Powell, I wanted to ask you a couple of questions about the Board of Directors. Was there a practice and procedure of the Board of Directors -- let me start again.

Was there something called an annual meeting of shareholders?

A Yes. The annual meeting of the shareholders took place originally in March of each year and then subsequently was advanced to April.

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Q And after the annual meeting of shareholders, the board of directors were re-elected for the coming year?

A They were elected by the shareholders at that meeting.

Q And then after the annual meeting, of shareholders, the board of directors has a meeting in which it reconstitutes itself; is that correct?

A It has a reorganization meeting for the ensuing year and appoints committees, reviews certain matters, and also is required to reappoint all officers together with their salaries for the ensuing year. That is part of the bylaws of the bank.

Q So on an annual basis every year the board of directors reconfirmed every officer at his particular salary; is that correct, sir?

A Absolutely, sir.

Q Now, during the year when officers got raises, would there be very much discussion about that at the board of directors?

A I would say relatively none.

Q The board of directors' function was a pro forma one; is that right?

A Pretty much so, sir.

Q Now, I wanted to go to Mr. Langdon. You

pointed out in response to a question by Mr. Pattison that Mr. Langdon was satisfied because you never heard from him again; is that correct?

A I assumed that.

Q I take it that you had many dealings with Mr. Langdon over the years.

A Yes. Mr. Langdon and I, I suppose -- we had more relationships between the controller's office and myself as the years progressed. The responsibilities of running the bank on a day-to-day basis were mine. Mr. Langdon would approach me at the time of the capitulations, we would go over the matters that would have to be reviewed and the reports that were required and he would continually come into my office about matters and on many occasions he would come into my office and discuss matters outside of the operation area because I think he respected me and we had a very good relationship.

Q And Mr. Langdon would do any formal capitulations of the bank when he looked at loans or operations, and if he wasn't satisfied with any information or answer he got, he came back, did he not, and asked for more information?

MR. KATZBERG: Objection.

THE COURT: Overruled.

A He generally came to me.

Q And he didn't in this case?

A No, sir.

Q Now, I want to refer just for one moment to the anonymous letter which I think is in front of you. I don't know the number, Mr. Powell. It's No. 171, and it refers to on the first line, does it not, where it says that-- "Dear Mr. Comptroller: You may be interested in a situation which is now existing at the Security National Bank," is that correct?

A Yes.

Q And it goes on to make allegations as to what presumably was going on at the Security National Bank in 1971; is that correct?

A That's correct.

Q And one of the allegations was that at that time people were sending out money to politicians via postage stamps; is that correct?

A Yes.

Q It says further, "Recently it got changed, and now they make contributions directly," is that correct? Look down at the bottom and I'll show it to you.

A That's right.

Q To your knowledge were any of the moneys ever,

that the officers ever gave to Betty Jaeger ever disbursed in postage stamps?

A Not to my knowledge.

Q Were any of the moneys ever given to the Long Island Public Affairs Club ever disbursed in postal stamps?

A Not to my knowledge.

Q Any money that you or any other officer made out was that ever made out for U.S. postage stamps?

A I can only refer to the checks I made out, and none of them were made out for that purpose.

Q Now, there was some question about bonuses against salaries raised by Mr. Pattison, and I think you indicated that a bonus is a one-shot thing.

A Definitely.

Q You get it on one occasion for one specific purpose; is that correct?

A Yes.

Q If you get a salary increase or salary adjustment, that's yours permanently for all times sake.

MR. PATTISON: Objection, your Honor.

THE COURT: Yes, sustained.

Q Can you tell us whether or not when you get a salary adjustment in the bank it's permanent or not?

MR. KATZBERG: Same objection.

THE COURT: I'll allow him to answer, the faster to get it over with.

A Yes, it's so long as you're employed by the bank.

Q To your knowledge, did anyone who was ever given a $1700 salary adjustment or $2,000 salary adjustment or whatever it was to assist them economically in making contributions, were those adjustments ever taken away from any of those people when any of them stopped temporarily or permanently from making those contributions?

A Not that I ever heard of.

MR. NAFTALIS: No further questions, your Honor.

THE COURT: Anyone else?

MR. KATZBERG: We have no questions, your Honor.

THE COURT: All right, you may step down.

Anything else?

MR. RYAN: Your Honor, at this time, the defendant Frank Powell rests his case.

THE COURT: All right.

Are there any other witnesses?

MR. BANNIGAN: I have a couple, your Honor, but they are not available right now.

concluding part of the case.

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MR. KATZBERG: May I proceed?

THE COURT: You may.

MR. KATZBERG: The Government calls Joseph Dutra.

J O S E P H D U T R A , having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Dutra, in a loud voice sir so that everybody on the jury can hear you, will you tell us where you live?

A In Barrington, Rhode Island.

Q And what is your occupation?

A Real estate developer.

Q Mr. Dutra, was there a time you were employed by the Security National Bank?

A Yes, there was.

Q When did you start working there?

A In January 1969.

Q What was your titie?

A Vice president.

Q Who did you report to at that time?

A To Mr. Dowd.

Q David Dowd?

A David Dowd.

Q Keep your voice up please. Mr. Dutra, did there come a time when you learned that there was a system in the bank whereby officers made political contributions?

A Yes there was.

Q And when for the first time did you learn this?

A Four or five months after I was with the bank.

Q Would that be late spring or early summer 1969?

A About there, yes.

Q And how did you first learn about that sir, can you tell us?

A I was asked to attend a function on behalf of the bank, a dinner.

Q Who asked you that?

A Mr. Dowd.

Q Tell us what that conversation was?

A I was asked if I could attend a political function representing the bank which was being held at that time.

Q Continue.

A And Mr. Dowd said that I was to pick up my tickets to the function and I do not remember at this time which one it was because there were many functions like this.

I picked up the tickets and they were expensive, and I saw they were expensive, and I asked who was going to pay for it.

Q What did he say?

A He said they would be paid for by the Betty Jaeger fund.

Q Is that the first time you learned about the Betty Jaeger fund?

A Yes.

Q This conversation, or shortly there after, did you have a discussion with Mr. Dowd and with more particularity about the Betty Jaeger fund?

A Yes.

Q Will you tell us what that was?

A Well, I asked what the fund was and it was indicated to me there was a fund that was contributed to by various officers in the bank for the purpose of purchasing tickets that were received as requests from various organizations in the two counties.

Q Did there come a time, Mr. Dutra, when you yourself were asked to be a contributor to this fund?

A Yes, I was.

Q Approximately when was that?

A I think it was sometime in the fall of the year I joined the bank.

Q 1969?

A 1969.

Q And who asked you to do that, sir?

A Mr. Dowd did.

Q What did he say to you?

A We were discussing attending political functions and he indicated to me that he felt that because of my position in the bank and my relationship to the public contacts of the bank, that I should be contributing to the fund also.

Q Did he indicate how much the contribution would be?

A The contributions were $100 a month.

Q Did Mr. Dowd say anything else about the manner of these contributions at that time, that you recall?

A Well, I think only that those of us who would be contributing would be expected to keep our contributions confidential. It was not public knowledge, they were confidential.

Q But you agreed to join at that time sir, did you?

A I think I asked if I could think it over for a day or two.

Q Did there come a time you did agree to join?

A Then I agreed to join.

Q Did you have any choice in this matter, sir?

A I did not feel I did at the time.

Q Did you begin making your contributions?

A YEs I did.

Q Do you have the checks with you today sir that you wrote?

A No I do not.

Q Can you tell us what happened to them?

A Well, I moved a couple of times since then and just could not locate them.

Q In this conversation with Mr. Dowd when he asked you to contribute, was anything said about reimbursement or giving you a salary increase to pay for those contributions when he first asked you?

A Not at the time I was asked to contribute, no.

Q Did you contribute it out of your own funds?

A Yes I did.

Q Did there come a time after you actually were again making the contributions when you did have a conversation with MR. Dowd on the subject of receiving a salary increase or reimbursement for contributions?

A At a short time later we discussed it again, yes.

Q Still late 1969 approximately?

A I would say so, yes.

Q Can you tell us about that sir, that conversation?

A WEll, I learned that several other people mentioned to me that they were being compensated for their contributions and I asked why I was not.

Q Who did you ask that from?

A Mr. Dowd.

Q And what did he say to that?

A I think it was something like I came into the bank at a very high salary and I would be expected out of that kind of salary to make the contributions.

Q Did there come a time in approximately the end --

MR. COHN: I am going to object to Mr. Katzberg giving the witness a time. This is material and I would like to get the time from the witness himself.

MR. KATZBERG: Very well.

THE COURT: Yes.

Q Did there come a time, Mr. Dutra, when you learned who was making the decision as to where the money in the contributions fund would go?

A Yes, yes there was.

THE COURT: Yes, that is it.

Q And approximately when for the first time did you learn that information?

A As I began to attend functions I learned over the next few months how it was handled. I guess that probably would be the spring of 1970 or winter of 1969 or early spring of 1970.

Q Who first told you that?

A I believe it was in a discussion with Mr. Dowd.

Q What did he say to you about who was making the decisions as to where the contribution money would go?

A Well, the requests came in from various sources and so we had occasion to discuss how they should be disbursed and it became evident as I talked to Mr. Dowd --

MR. RYAN: Would the witness tell us the conversation, what the conversation was with Mr. Dowd.

THE COURT: All right.

Q Tell us what Mr. Dowd said as to who was making these decisions.

A Mr. Dowd and I had many conversations together and to the best of my recollection in one of the conversations about this period Mr. Dowd said to me that all major decisions would be made by senior management groups.

Q Who was that?

MR. RYAN: Mr. Dowd said -- and with respect to the senior management group, the names.

Q The names?

A The senior management group was Mr. Clifford and Mr. Powell and Mr. Dowd amongst others.

MR. NAFTALIS: May we have the "amongst others" who the others were.

THE COURT: Who else, anyone else?

THE WITNESS: They were the ones I was involved in. This senior management group in general would be referred to as the senior management committee.

Q Now, did Mr. Dowd mention Mr. Clifford, Mr. Powell and his name specifically, sir, at that time?

A Yes, he did.

Q Did there come a time when you yourself participated in these decisions with Mr. Clifford, Mr. Dowd and Mr. Powell as to where the money was to go?

A Yes I did.

Q When did you start participating in the decisions yourself, approximately?

A About this period in the spring of 1970.

Q When these decisions would be made were these at formal meetings or informal meetings?

A Informal.

Q Where would these conversations take place physically?

A Depending on where we were, either Mr. Powell's office, Mr. Clifford's office or Mr. Dowd's office.

Q When you first began attending these conversations, I will call them, was anybody else regularly attending these conversations other than the four people you have described, yourself, Mr. Clifford, Mr. Powell and Mr. Dowd?

A People were always in and out but they were the principal ones who discussed these subjects.

Q Did there come a time when you ceased to be involved in these conversations as to where the money was to go?

A As I began to make plans to leave the bank, I moved away from it, yes.

Q About when was that, sir?

A That would be late in the year in 1970.

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Q Now, I want to focus on the period of time you were involved in these decisions between approximately the spring of 1970 through the end of 1970. During this period of time, sir, could you describe to the ladies and gentlemen of the jury what things were discussed with respect to approving or disapproving these contributions?

MR. NAFTALIS: I object. I think he should ask specific conversations, as to what things were discussed.

THE COURT: Was there anything discussed?

Q What was the general nature of the conversation?

MR. NAFTALIS: He said what to whom?

THE COURT: Who was present and what was said?

MR. RYAN: Yes, that is right.

THE WITNESS: A request would come in, a major request would come in from an organization.

Q Excuse me, could you describe what a major request was, sir, in dollar amounts?

A There was no specific breaking point where it was major request, but I think depending upon who the organization was or the individual was making the request, if 500 to 1,000 dollars, more or less.

Q That would be a major request?

A Right.

Q Continue about these discussions as to major

requests amongst yourself, Mr. Clifford, Mr. Dowd, and Mr. Powell.

A A major request, particularly if it was one that had not come into the bank before would be discussed and the amount of tickets, usually tickets that were asked to be purchased, the amount of tickets to be bought of so-and-so for an occasion and what specific person should attend.

Q Other than deciding where the money should go, other than that decision did, to your knowledge, Mr. Clifford, Mr. Dowd, Mr. Powell and yourself discuss other matters with respect to the contributions organization?

A On occasion, yes.

Q And did that include the selection of members participation?

MR. NAFTALIS: Object to the leading.

MR. RYAN: Can we establish when conversations took place?

MR. KATZBERG: Well, there were a number of conversations in this period.

THE COURT: Tell us about it one at a time.

Q In the spring of 1970 and the end of 1970, is that right, sir?

A Yes, that is right.

Q I was referring to the conversations. Were

there conversations about participants in the club, in the organization at that time?

MR. NAPTALIS: I object, that is the same question we objected to before.

THE COURT: I will allow it. Go ahead.

THE WITNESS: Am I to answer that?

THE COURT: Yes.

Q Yes.

A Yes, sir, at one point there was a discussion regarding the number of peoplewho were participating in the club.

Q Was there ever a discussion about who should or should not be added into the club?

A Yes, the club had to be expanded and --

MR. RYAN: I am sorry, your Honor, I must object to these questions. Who said what at these meetings and who was present?

THE COURT: Yes, that mustbe done.

Q When this conversation took place about including new members into the club, the one you are referring to, who was present?

A It was different on various occasions but the people who usually discussed the decisions about it were Mr. Clifford, Mr. Powell, Mr. Dowd.

MR. RYAN: I have to object as to the general statement. I would like to have the conversation from the witness.

THE COURT: If he remembers the conversation, the substance. If you remember the substance of the conversations, you cannot draw conclusions for us as to the conversation.

THE WITNESS: I am not trying to do anything. This is six or seven years ago. I am being as specific as I can.

THE C$URT: We realize this, this trial is about six or seven years ago.

Q May I approach it this way: There were a number of such conversations, sir?

A Yes.

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BY MR. KATZBERG:

Q And that these conversations were with the same participants you already mentioned who were involved in those conversations, sir?

A Yes, on various occasions.

Q Would you tell us in these conversations what, if anything, was discussed among the people you named as to the criteria as to whether or not a person should be included as a participant?

MR. RYAN: I must register objection as to form.

THE COURT: The form is bad.

Tellus what you discussed at these discussions to the best of your recollection, giving the time, place and persons present at the time -- if you can remember.

THE WITNESS: I am not certain that I can remember specific conversations that long ago.

THE COURT: The substance.

THE WITNESS: The substance was that on various occasions, in the bank's interest for political requests, I discussed with Mr. Dowd and frequent occasions with Mr. Powell and Mr. Clifford, who should belong to the club and how much money

was needed and where it would best come from.

MR. RYAN: Your Honor --

THE COURT: Yes.

We would like to know if you recall what you said to him, whether you said something about it or whether he said something that caused the conversation in the first place.

BY MR. KATZBERG:

Q Do you remember specifically who said what or just what was said?

A There were many meetings of this kind held.

THE COURT: We understand. But we still have to get your testimony in accordance with the rules before this Jury.

You can't give conclusions.

It is for them to make a determination.

Do you remember who was present and who said what to whom and as close to the time as possible?

If it took a span of four to five as to the various conversations, say so. You must be able to remember something about the conversations.

BY MR. KATZBERG:

Q You recall the participants were yourself, Mr. Dowd, Mr. Clifford and Mr. Powell --

MR. RYAN: I object.

THE COURT: He already said that. It's like putting a bridle on him and taking him down the path.

BY MR. KATZBERG:

Q Do you recall specifically who said what or do you just recall the general conversation?

A At one conversation I know there was a discussion.

THE COURT: When do you recall that conversation taking place? About when?

We don't expect the hour and minute, about when?

THE WITNESS: In the spring of 1970 or the summer --

THE COURT: Tell us what you recall of that conversation and who said what to whom and who was present.

THE WITNESS: I believe it was a conversation where Mr. Clifford, Mr. Dowd, Mr. Powell and myself were present.

THE COURT: Tell us what you remember of that conversation -- the substance of it.

THE WITNESS: It was discussed that the

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club did not have enough members and that we had to expand the club.

BY MR. KATZBERG:

Q Was there any discussion as to --

MR. BANNIGAN: I object to leading.

THE COURT: Was anything else said?

MR. RYAN: And who said the club needed to be expanded?

THE COURT: Is there anything else said and can you recall who made the statements?

THE WITNESS: We were receiving requests for official inquiries and if I recall correctly, I believe Mr. Powell indicated to me there were no longer enough funds to satisfy the requests that were coming in, and I recall a discussion with Mr. Dowd indicating that we would have to expand the club from whatever number it had -- I think 25 or 26 -- to about 45.

Q What were the standards used, what criteria were used to determine whether or not a person should be included into this expanded club?

THE COURT: Part of the conversation.

Q What standards did you discuss in determining whether or not somebody should be included?

THE COURT: If it was discussed.

MR. BANNIGAN: I object.

Ask if it was discussed.

THE COURT: Did you discuss anything with reference to who may become a member of the club and the standard to be set?

If it was discussed and if not, say so.

THE WITNESS: I can't testify that we listed specific standars, but I do recall a conversation I believe it was with Mr. Dowd -- that --

MR. COHN: May we have the time fixed, your Honor?

Is it the same conversation?

THE COURT: The spring of '74.

MR. COHN: I believe he's testifying to a different conversation.

BY MR. KATZBERG:

Q Are we talking about the spring of 1970?

A There would have been more conversation. I can't separate one from the other. I am trying to piece together, to the best of my ability, my involvement with the other officers of the bank, and as I say, I don't recall a specific set of criteria being either written out or actually agreed upon verbally, but I do recall

a conversation that indicated --

MR. COHN: I would request your Honor to direct the witness to give us the time and place the conversation took place.

THE COURT: What is your best recollection?

THE WITNESS: This is the same time period -- is that all right?

THE COURT: Yes.

THE WITNESS: I believe I had a conversation with Mr. Dowd where we discussed the importance of a person being a pemrnanent officer of the bank and an officer that had the same kind of contacts and responsibility as I did -- outside contacts and responsibilities.

BY MR. KATZBERG:

Q Any other factors that were discussed?

A I think that we agreed that an officer --

MR. COHN: If it is what he thinks, I would like the conversation.

THE COURT: He can't surmise or speculate though it was a long time ago.

Q Do you recall any other factor being discussed?

A I know it was suggested by Mr. Dowd to me that it was important for me to be discreet about my

contributions --

MR. COHN: That's not responsive.

Q With respect to the new members, were there any other factors discussed?

A To be discreet in the contributions.

MR. COHN: I move that be stricken.

The question was: What factors were discussed to bring new members.

THE COURT: Are you talking about someone else or yourself?

THE WITNESS: The prospective new members.

THE COURT: Okay.

BY MR. KATZBERG:

Q Mr. Dutra, did there come a time in approximately March of 1970 when you had a conversation --

MR. NAFTALIS: I object. Let the witness --

THE COURT: He's talking about the spring of 1970.

MR. NAFTALIS: Mr. Katzberg is suggesting a date.

MR. KATZBERG: Counsel knows that it is permissible to do that.

MR. COHN: I don't know that.

MR. NAFTALIS: I don't know that.

THE COURT: I don't know that either.

MR. KATZBERG: To fix a time for a conversation?

BY MR. KATZBERG:

Q Did there come a time in approximately March of 1970, when you had a conversation with other people about changing the structure of the contributions organization?

A Yes, we did.

Q With whom did you have that conversation?

A It was with Mr. Clifford, Mr. Powell and Mr. Dowd.

Q Where did that conversation take place --

MR. KATZBERG: I ask Mr. Naftalis stop making faces.

MR. NAFTALIS: I wasn't and I object to the remark. Totally uncalled for.

THE COURT: Go ahead.

Q Where did the conversation take place?

A In the bank in Huntington. I am not certain but I believe it was in Mr. Clifford's office.

Q Can you tell the ladies and gentlemen of the Jury as you best recall, what was said in this conversation?

A Could you ask me the question again so I can try to put it --

Q The question is:

With respect to this meeting between yourself, Mr. Clifford, Mr. Dowd and Mr. Powell, reconstructingas best you can tell us what was said in that conversation?

A I am not sure I can recall specifically who said what but can I testify to the conversation --

THE COURT: Yes. Go ahead.

THE WITNESS: That the bank had been advised by counsel that the method of responding to requests for political contributions had to be changed and that there were two factors that were a problem; one was ecompensation of the officers, and the other was the maintenance of a bank account from which checks were written.

Q Do you recall at this time, after that part of the conversation --

MR. BANNIGAN: I would like to know who said that, if the witness is able to speculate on that.

THE COURT: Go ahead.

Q Do you recall saying anything yourself --

MR. BANNIGAN: I asked who said what.

Q Did you say anything at that time in response to that?

MR. NAFTALIS: I thought the witness was going to identify who allegedly said this prior statement.

THE COURT: Did you say -- did anybody say anything to you at that time?

THE WITNESS: This was a conversation about how we could --

THE COURT: Everyone was talking?

THEWITNESS: Your Honor, I don't think I can honestly recall specifically which persons made which sentence.

This was a conversation.

THE COURT: Then tell us the substance of what you say was said.

THE WITNESS: I recall having this conversation and I was part of it.

We were discussing what ways we could change the club to make it acceptable to counsel. I can remember that conversation.

THE COURT: That was the tone of the conversation?

THE WITNESS: Yes.

I suggested we organize a political club outside of the bank and that we include in the political club not only our officers but some of our branch directors and some of our major customers and have it outside and separate from the bank.

BY MR. KATZBERG:

Q Was there any discussion about the salary raises?

A The question of salary raises was part of this discussion and I suggested that we move it outside the bank and make it independent and stop giving salary raises.

Q Did anybody say anything to that, sir?

A Well, in any conversation that related to salary raises it was brought out -- it was always brought out --

MR. NAFTALIS: I object to "any conversation."

THE COURT: This conversation only.

Q Just talk about this conversation.

A Well, Mr. Dowd frequently said --

MR. COHN: Objection to what he frequently said.

A He said on this occasion, among others, that we were not reimbursing officers for political contributions that they were being reimbursed for nighttime work and extra effort and being away from their family and so forth.

Q Was there any other discussion at that meeting, as you recall?

A No, I don't think so.

Q Did you propose the name of this new organization in this meeting?

A I think I did.

Q What was the name of the organization that you proposed?

A The Long Island PUblic Affairs Club.

Q Now, was that suggestion accepted or rejected, if you recall, in this meeting?

A It was accepted.

Q Was anything said about implementing the Long Island Public Affairs Club?

A I was asked by, I believe, Mr. Dowd to check with our house counsel to put together a set of by-laws and Mr. Clifford, I believe, said he would check with counsel or ask Mr. Dowd to check with counsel.

Q Did you have a conversation with Mr. Dowd

about what you were to tell Mr. Driscoll?

A Mr. Dowd suggested that I contact Mr. Driscoll and simply get a set of by-laws for a political club, for a political club.

Q Was there any further discussion about what you should say to Mr. Driscoll --

MR. COHN: Objection to putting words in the witness' mouth.

Let him ask what else was said.

A The conversation was with Mr. Dowd as I recall it, that there was no need to get into all the details with Mr. Driscoll but simply get a set of by-laws for a club that could function.

Q Did there come a time when you indeed did speak to Mr. Driscoll?

A Yes, I did.

Q Now, Mr. Dirscoll was an attorney, was he not?

A Yes.

Q He was in-house counsel for the bank at that time, as you recall?

A Yes, I believe that's his title.

Q Now, approximately how soon after your conversation with Mr. Dowd did you actually speak to

Mr. Driscoll?

A I think within a few days.

Q What did you say to Mr. Driscoll?

A That we were going to organize a Public Affairs Club, that it would be called the Long Island Public Affairs Club and that I would like to have him help in drafting a set of by-laws.

Q Did you ask Mr. Driscoll for a legal opinion about the club?

A No, I didn't.

Q Did you tell Mr. Driscoll that salary raises --

MR. COHN: Objection. Leading.

THE COURT: Bad question.

Q Was there any other conversation at all about the club with Mr. Driscoll, do you recall at that time?

A No.

I only recall enough conversation with Mr. DRiscoll to tell him we were organizing a club and we needed a set of by-laws that would function under the Roberts Rules of Order.

Q Did there come a time when you wrote a memorandum to Mr. Driscoll about this, sir?

A I believe I did, yes.

Q How did that come about that you wrote the memorandum?

A As is customary, I think Mr. Driscoll asked me, if I wanted him to take this action, I should put it in writing.

Q And there came a time when you did put it in writing?

A Yes.

Q I show you Defendants PPP in Evidence and I ask you, sir, if you recognize that.

(Handing to witness.)

A Yes, I recognize it.

Q What do you recognize that to be?

A This is a memo I wrote to Mr. Driscoll.

Q That's a Xerox copy, of course, not the original; is that correct?

A That's correct.

Q Prior to your giving that memorandum Defendants PPP to Mr. Driscoll, did you discuss that memorandum with Mr. Dowd?

A Yes, I did.

Q Now, prior to your writing the memorandum, did you have a conversation with Mr. Dowd with respect to the legal opinion of the Shea firm about the club?

A Yes, I would have had to have.

Q Do you recall what Mr. Dowd told you?

MR. BANNIGAN: I object to "I would have had to."

He did or didn't.

Q Do you recall whether or not you did, sir?

A Yes, I did.

Q Would you tell us what Mr. Dowd said at that time?

MR. PATTISON: May we approach the bench, please?

(The following occurred at side bar.)

MR. PATTISON: Your Honor, the last question and the last answer, counsel Mr. Bannigan, said, in a voice clearly audible throughout the Courtroom, "Now, he did."

MR. BANNIGAN: I admit saying that, but I said it to my associate here.

MR. PATTISON: When Mr. Driscoll said he made a letter, Mr. Bannigan said, "Oh, now he did."

MR. BANNIGAN: I apologize.

MR. PATTISON: It was clearly audible to me and the Jury.

He can whisper but this wasn't whispered and

I submit it is not proper.

MR. BANNIGAN: I apologize.

THE COURT: He apologized, okay.

(The following occurred in open Court.)

MR. KATZBERG: May I ask the reporter to read back the last question?

(Record read.)

THE WITNESS: I'm sorry. I lost track of which conversation this was.

BY MR. KATZBERG:

Q With respect to the advice of counsel.

A Mr. Dowd indicated to me -- told me that counsel had approved it and to get the by-laws approved.

Q Then you wrote this memorandum to Mr. Driscoll?

A That's right.

Q As per Mr. Driscoll's request?

A That's right.

Q The memorandum you wrote, didyou not, with the concurrence of bank's counsel?

A Yes.

Q What were you referring to there?

A The Shea firm.

Q You didn't speak to the Shea firm, did you, sir?

A No.

Q In the agreement of members of senior management, who are you talking about there?

A Mr. Clifford, Mr. Powell and Mr. Dowd.

Q Then you propose certain people were officers of the Long Island Public Affairs Club?

A Yes, I did.

Q You as president; is that correct, sir?

A Yes.

Q Do you recall who made you president of the Long Island Public Affairs Club?

A It was the agreement of the group in that discussion that I should be president.

Q Did you, yourself --

MR. RYAN: What discussion are we talking about now? I'm sorry.

Q We're talking about the original meeting where you proposed the Long Island Public Affairs Club?

MR. RYAN: In Mr. Clifford's office, is that the one?

THE WITNESS: Yes.

Q Did you recommend yourself for president, sir?

A The group agreed that I would be president.

Q Who made Mr. Casey the vice-president?

A The same discussion and the same people, Mr. Clifford, Mr. Powell and Mr. Dowd.

Q Was that your decision, sir?

A No.

Q How about Mr. Dowd as secretary? Who decided that?

A The same answer. Mr. Clifford, Mr. Powell and Mr. Dowd.

Q How about Mr. Powell as treasurer?

A The same answer, the same people.

Q Then you list a number of people as members?

A Yes, I did.

Q Where did you get those names from, sir?

A I picked them up from Mr. Powell's office from Betty Jaeger.

Q To your knowledge, Mr. Dutra, were any of those people who were listed as members of the Long Island Public Affairs Club ever informed that they had been chosen as members of the Long Island Public Affairs Club?

A I don't believe any of them were, no.

Q Did there come a time when a bank account was opened in the name of the Long Island Public Affairs Club?

A Yes, there was.

Q Now, you told us that there came a time when it was decided that the club had to be expanded; is that correct, sir?

A Yes, that's correct.

Q Did there come a time after you were informed of that that you went to see Mr. Travers?

A Yes, I did.

Q And what was Mr. Travers title at the bank at that time?

MR. COHN: If your Honor please, I would object to that now. This is imporoper rebuttal.

This has nothing to do with the matters we discussed.

THE COURT: As far as Mr. Travers, I would say so.

MR. KATZBERG: All right, your Honor.

THE COURT: You are limited at that point.

Q Now, did there come a time when you had a conversation with Mr. Dowd about introducing the new members of the club into the expanded club?

A Yes, we discussed it.

Q Can you tell us whether or not anybody else was present at around that time in that conversation?

A Mr. Dowd and I discussed it in Mr. Travers' office with Mr. Travers at that time.

Q After that conversation, did there come a time when you and Mr. Dowd discussed it yourselves?

A Yes.

Q About when was this, sir?

A In the summer of -- spring or summer of 1970, I think about then.

Q What did you tell Mr. Down and what did he say to you?

A As I recall it, we discussed the need to expand the club and Mr. Dowd asked me if I would add to the names or review the names with him and make some of the contacts, and I just wasn't in the position at the bank at that time to get people to do this, so I kind of begged off.

Q What did he say to that, sir?

A I think it was obvious --

MR. COHN: Objection.

Q Just tell us what he said, sir.

A The end of the conversation was that he said, "All right," and that I wouldn't have to do it.

Q Did there come a time late in the summer of 1970, that you learned that the Long Island Public

Affairs Club --

MR. COHN: Can't we have the witness tell us?

MR. KATZBERG: I have to direct his attention to the time.

THE COURT: Did he have a conversation?

BY MR. KATZBERG:

Q Did there come a time when you learned that the Long Island Public Affairs Club was to be terminated?

A Yes. Yes, there was.

Q Who toldyou that, sir?

A Mr. Dowd called me on it one day.

Q And what did Mr. Dowd tell you, briefly?

A As I recall it, he said that counsel had said that we should immediately stop the Public Affairs Club contributions.

Q Did there come a time when a new contributions method was introduced to replace the Long Island Public Affairs Club?

A Yes.

Q How did you learn about that, sir?

MR. COHN: Again, I request whether this is proper rebuttal.

It is outside what we discussed, your Honor.

THE COURT: Not proper. Move on to something else.

BY MR. KATZBERG:

Q Do you know a man named Thomas Casey?

A Yes, I do.

Q Was Mr. Casey involved in the contributions in the summer of 1970?

A Yes, he was -- '70?

Q Yes.

A I believe he was in '70, yes.

Q Did you ever have any conversations with Mr. Casey wherein you discussed the illegality of the contributions --

MR. NAFTALIS: Objection.

THE COURT: Sustained.

MR. NAFTALIS: Would your Honor instruct the Jury that questions are not evidence.

MR. KATZBERG: May we approach the bench?

(The following occurred at side bar.)

MR. KATZBERG: Your Honor, during the defense case, these defendants -- Mr. Dowd specifically denied any conversations with Mr. Casey that this thing was illegal.

Mr. Casey testified that he spoke both to

Mr. Dutra and Mr. Dowd about the illegality of the contributions system.

All I want to do is ask him about his conversations with Mr. Casey on the illegality of the contributions.

THE COURT: No, it is for the Jury to weigh whether or not they were illegal.

Casey admitted they were illegal. What difference that he told Dutra?

MR. KATZBERG: But he said he didn't say it before and the point is he did.

I have a right to corroborate.

THE COURT: Not on rebuttal.

(The following occurred in open Court.)

BY MR. KATZBERG:

Q Now, did there come a time, Mr. Dutra, when you left the bank?

A Yes, I left the bank.

Q Approximately when was that, sir?

A I believe it was February of 1971.

Q Now, after you left -- withdrawn.

Did there come a time, Mr. Dutra, when you saw a Wall Street Journal article with respect to contributions?

A Yes.

Q I want to show you Government Exhibit No. 162 in Evidence.

I ask you to look at it and tell us whether or not you recognize it.

(Handing.)

A I can remember reading this article, yes.

Q Now, when for the first time do you recall reading this article?

Q The day that it was in the paper.

Q And the date on here is NOvember 21, 1969; is that correct, sir?

A Right.

Q When you saw this article for the first time on that date, was it clipped out of the newspaper or reproduced or did you actually see it in the Wall Street Journal itself?

A No. In the Wall Street Journal, I'm sure.

Q Did there come a time in November of 1969 when you discussed that article --

MR. COHN: Objection, your Honor.

Let him ask whether or not he discussed the article.

THE COURT: Doesn't make a difference.

BY MR. KATZBERG:

Q -- with Mr. Dowd, David Dowd?

A Yes, I did.

Q And how soon after NOvember 21st, the date it appeared, 1969, did you discuss that article with Mr. Dowd?

A How soon after?

Q Yes, sir.

MR. RYAN: Or how late after.

Q Or how late after.

A I can't remember exactly. It would have been that day or the next couple of days.

Q Would you tell us what you said to Mr. Dowd and what Mr. Dowd said to you?

A I expressed concern about what the article said with Mr. Dowd and indicated to him that several other officers had mentioned it to me and they had expressed concern.

Q Did you discuss with Mr. Dowd --

MR. BANNIGAN: Objection.

THE COURT: No, I will allow it.

MR. BANNIGAN: What else was said, not what might have been said.

THE COURT: Ask the question.

BY MR. KATZBERG:

Q The portion of the article that refers to bonuses being given to compensate officers, leaving enough for tax purposes, with the understanding that the officers would return the money for political contributions --

MR. COHN: Is Mr. Katzberg quoting the article or telling the Jury --

Q Did you discuss that part of the article, sir?

A Yes, we did.

Q What did Mr. Dowd, if anything, say to you after he told you what you have told the Jury he already said?

A As I recall again, in this conversation, Mr. Dowd said we were not reimbursing officers for political contributions but they were being reimbursed for the extra effort and time and work required to participate in these functions.

Q Did there come a time when you discussed that newspaper article with Frank Powell?

Q As I recall it, on the same day or near that time, I discussed it with Mr. Frank Powell.

Q When you say near that day or the same, are

you talking about November, 1969? A 2699

A Yes.

Q Tell us what you said to Mr. Powell and what Mr. Powell said to you.

A As I recall the conversation with Mr. Powell, it was similar to that.

MR. RYAN: I'm sorry, but similar to that --

MR. KATZBERG: I agree with Mr. Ryan.

MR. RYAN: I'd like the conversation as best you can recall.

THE WITNESS: Sir, I can't remember an exact conversation from six or seven years.

Q The substantial --

MR. RYAN: I would like the substance.

A I expressed my concern to Mr. Powell about how we were handling the political contributions of the bank after reading the articles and indicated that several officers had expressed their concern.

Q And what did Mr. Powell say?

A If I recall correctly, he indicated to me that he shared some of my concern about it.

Q Had Mr. Powell read the article at the time you had the conversation, to the best of your knowledge?

A We discussed it so he would have had to have read it.

Q Now, other than discussing that article with Mr. Powell and Mr. Dowd, didyou discuss it with any other officers of the bank, that you recall?

A I recall at the time there being discussions about the article around the bank and I can recall one other person that was really concerning about it.

Q And who was that?

A One of our lending officers, Mr. Winston Hart.

Q By the way, did a number of the officers, to your knowledge, of the bank, subscribe to the Wall Street Journal at that time?

A The bank had subscriptions for officers, yes.

Q And for which category of officers, if you know, didthe bank have subscriptions to the Wall Street Journal for?

A I don't have knowledge of what specific officers --

MR. RYAN: If he doesn't have knowledge --

MR. PATTISON: He was asked about category.

THE COURT: We;re going to recess at this point.

(Luncheon recess.)

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AFTERNOON SESSION

April 28, 1976
2:45 p.m.

MR. KATZBERG: Are you ready to proceed, your Honor?

THE COURT: Yes, we are ready.

All right.

Bring in the witness.

MR. KATZBERG: Or do you want --

THE COURT: No, we are going to complete this witness but I think sometime during the afternoon we should have some decisions or arguments on the proposition that you are now putting before the Court as to whether or not lesser degree should be charged to the jury.

MR. KATZBERG: Yes, your Honor, I would make that formal application now that the Court instruct the jury on the lesser included offenses, the one minus the element of wilfullness.

THE COURT: We will discuss that as soon as we finish with the witnesses.

MR. KATZBERG: Okay, thank you, Judge.

THE COURT: Bring the jury in.

(The jury took its place in the jury box.)

J O S E P H D U T R A , having been previously sworn, continued to testify as follows:

DIRECT EXAMINATION

BY MR. KATZBERG: (continued)

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes -- one juror is missing.

Members of the jury: a juror is missing.

He is here now.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: All right.

BY MR. KATZBERG:

Q Just before we broke for lunch, Mr. Dutra, I was asking you about whether or not you knew what category of employee at the bank, if any, had subscriptions to the Wall Street Journal in 1969.

A I do know many of the senior lending officers had subscriptions.

Q Now, you told us that you left the bank in about February of '71; is that correct?

A That is correct.

Q And between the early part of 1970 and the end of February -- and the end of 1970, from the beginning to the end of that year, can you tell us approximately how many conversations you had with Mr. Clifford, Mr. Dowd or Mr. Powell

concerning this contributions matter, approximately?

A I would say that I had a conversation with one or more of those people each week, but they weren't all in attendance at all of the discussions.

Q Now, Mr. Dutra, I want to direct your attention to the year 1974 after you left the bank: Did there come a time when you spoke to a newspaper reporter on the subject of the contributions?

A Yes, I did.

Q Now, do you recall subsequent to your conversation with that newspaper reporter speaking to Mr. David Dowd?

A Yes, I do.

Q Now, can you tell us whether this conversation with Mr. Dowd was in person or over the phone?

A It was a phone conversation.

Q And did you call Mr. Dowd or did he call you?

A He called me.

Q Will you tell the ladies and gentlemen of the jury to the best of your recollection what Mr. Dowd said to you at that time?

A As I recall it he said -- we passed pleasantries then he said something like, Probably it would be in your best interest not to talk with the papers because you could implicate yourself in the situation.

Q Do you recall Mr. Dowd saying anything else?

MR. COHN: Objection. If there are going to be leading questions, I'm going to object to it.

MR. KATZBERG: My question was: Do you recall Mr. Dowd saying anything else at this time?

MR. COHN: Then I withdraw my objection, your Honor.

Q Do you, sir?

A I am sorry, I can't recall any other thing.

Q Fine.

Did there come a time when you received a newspaper article after your conversation with Mr. Dowd?

A Yes.

Q And from whom did you get that newspaper article?

A I had asked Mr. Dowd to send me a copy and mail it to me.

Q Is that the article you were discussing with him, sir?

A Yes.

Q I want to show you Defendant's Exhibit FF and I want you to look at that newspaper article and tell us whether or not you recognize it.

Do you recognize that, sir?

A Yes, I do.

Q What do you recognize that to be, Defendant's Exhibit FF?

A This is the article, this is the article that quoted me in a discussion with John Cummings.

Q And John Cummings is who, sir?

A He is the reporter.

Q And that is the article that you and Mr. Dowd discussed; is that correct?

A Yes, it is.

MR. KATZBERG: At this time the Government will offer Defendant's Exhibit FF, previously marked for identification, into evidence.

MR. RYAN: Your Honor, what is the purpose of the offer?

THE COURT: What is the purpose of the offer?

MR. KATZBERG: May we approach the bench?

THE COURT: Yes.

(The following occurred at side bar without the hearing of the jury.)

MR. PATTISON: Your Honor, this witness is actually quoted on the last line of this sentence: "Who now lives in Rhode Island. He said that the information about the Long Island Public Affairs Club

and the list was essentially accurate. He also said" -- well, in effect, and I don't want to read it down to the last line that the officers did get raises but it was for extra work and for the fact that they had to go to some of these affairs and was not for compensation, the hundred dollar a month payments.

MR. KATZBERG: Your Honor, in order for the jury to understand the full nature of the conversation with Mr. Dowd, they should be aware of what he actually said in the newspaper article, and for that reason the Government would offer the article in evidence.

MR. JOHN: Your Honor, the article quotes Shea, the lawyer, as saying that Shea knows nothing about it.

Your Honor, as far as the quotes are concerned, I don't think that this has any possible effect on this trial at all. I don't see what permitting the article in will have any effect at all and how this is binding on the defendant.

MR. KATZBERG: We want to be sure that the jury has all the information and it is being offered to show that that was said.

MR. BANNIGAN: To bolster his testimony at this trial?

Please, Mr. Katzberg, that is hearsay.

THE COURT: Enough things have been said in this trial, we don't need unfair things.

MR. PATTISON: The Government wants to show that it follows the line that Mr. Dowd gave him.

THE COURT: You are only cluttering the record with that.

All right.

(The trial then proceeded within the hearing of the jury.)

THE COURT: The objection is sustained.

BY MR. KATZBERG:

Q Mr. Dutra, did there come a time when you appeared before a Grand Jury about this matter?

A Yes, there was.

Q Now, prior to that time did you have a conversation with Mr. Dowd?

A Yes, I did.

Q Now, approximately how soon before you testified in the Grand Jury did you and Mr. Dowd have this conversation?

A The conversation was after I had received notification that I was to appear before the Grand Jury. I don't remember the date.

Q Do you remember how soon before you actually appeared in the Grand Jury you spoke to Mr. Dowd?

A Could you refresh my memory when I appeared before the Grand Jury?

Q July 30, 1975 and August 13, 1975.

A July 30th, I believe it would have been within a month.

Q Now, will you tell the ladies and gentlemen of the jury what you said to -- withdrawn.

Was this in person or over the phone, this conversation?

A This was over the phone.

Q Will you tell the ladies and gentlemen of the jury --

MR. COHN: Can we establish whether he called Mr. Dowd or whether Mr. Dowd called him?

MR. KATZBERG: Yes.

A I called Mr. Dowd.

Q You called Mr. Dowd?

A Right.

Q You spoke over the telephone, sir, is that correct?

A Yes.

Q And will you tell the ladies and gentlemen of the jury what you said to Mr. Dowd and what Mr. Dowd said to you.

A I called Mr. Dowd among several people on Long Island that I knew after I heard from Mr. Katzberg that I was to be subpoenaed as a witness before the Grand Jury because I wanted to find out what was happening and I had been advised to obtain counsel and I wasn't quite sure how to go about that.

Q Were you at this time, by the way, still in Rhode Island?

A In Rhode Island.

MR. BANNIGAN: I move to strike all of that, the question is he thought and the question should be what Mr. Dowd said to him.

BY MR. KATZBERG:

Q Tell us what you said to Mr. Dowd in this phone conversation when you called him and what he said to you?

A I said to Mr. Dowd that I had been subpoenaed by the Grand Jury to testify and that I had been advised to obtain counsel, and I asked him who his counsel was and could he suggest anyone that I could talk with about counsel.

Q Continue with the conversation, please.

A And he told me the name of his attorney and I asked if I could contact him --

MR. COHN: Can we establish that my name didn't come up in that conversation?

BY MR. KATZBERG:

Q Let me interrupt you for a second:

That attorney representing Mr. Dowd at that time was not Mr. Cohn; is that right?

A No, it wasn't him.

Q It was a Mr. Gayna; is that correct?

A Yes.

Q That was the name that was used, not Mr. Cohn's name; is that correct?

A Right.

THE WITNESS: I'm sorry, I didn't realize.

MR. KATZBERG: Okay.

MR. COHN: I appreciate that.

(Continued on next page)

when by Mr. Katzberg concerning your current testimony?

A I have to review that, I was contacted --

Q When did Mr. Katzberg tell you that he wanted to call you as a witness in this trial before you were here for eight weeks?

A I received the subpoena in February.

Q Well, this is almost May, and are you saying that you received the subpoena to testify in this trial prior to the commencement of the trial?

A I believe I did.

Q When for the first time were you asked to actually come down and take the witness chair and testify before this jury?

A On March 1st or within a few days before that, I think.

Q All right.

Well, today is April 28th, April 28th. How long prior to today, April 28th, did Mr. Katzberg say to you, Mr. Dutra, I want to interview you and put you on the witness chair and testify at the trial?

MR. KATZBERG: I object to the form.

If he wants to know when Mr. Dutra was notified --

MR. RYAN: Let me Dutra answer the question, please.

MR. KATZBERG: I object to the question.

THE COURT: He can answer.

MR. RYAN: I will rephrase the question.

THE WITNESS: I don't understand what your question is.

BY MR. RYAN:

Q Mr. Dutra, there came a time when you knew you would be testifying in this trial?

A Yes.

Q O.K.

And I take it you have talked to Mr. Katzberg before testifying today?

A Yes, I have.

Q And today I think is Wednesday; right?

A Yes.

Q Did he talk to you yesterday, Tuesday?

A Yes.

Q And where?

A In the fifth floor conference room I think it was.

Q In the United States Attorney's Office in this district, you came down from Rhode Island on Tuesday?

A Yes.

Q And you talked to Mr. Katzberg for how long before

A 2715

this trial?

A About an hour and a half, an hour and 45 minutes.

Q He of course showed you that Wall Street Journal article, correct, that you were shown on direct examination?

A Yes, he did.

Q O.K.

Now, did he tell you that there was testimony concerning that article in this trial?

A No, he didn't.

Q Did he tell you that there was some question about that article in this trial?

MR. KATZBERG: Objected to, asked and answered that it wasn't discussed.

MR. RYAN: A different question, if I may.

THE COURT: It sounds the same to me but go ahead.

MR. RYAN: All right.

Q It is a fact, is it not, Mr. Dutra, that you testified before this trial ever began in the Grand Jury on two separate occasions?

A Yes, that is right.

Q One occasion was July 30, 1975; remember that?

A Yes, I do.

Q O.K.

And you were of course told then at that time that you were a prospective defendant in this case?

A That is correct.

Q And Mr. Katzberg told you that there was an illegal contribution system existing at the Security National Bank when you were there; remember him telling you that?

A I think -- I think so, yes.

Q He told you there was an illegal political contributions system at the bank when you first testified on July 30, 1975; do you recall that?

A There was an illegal -- at the bank -- during the Grand Jury hearing, you mean?

Q Sure.

A Yes.

Q And the first time you testified for almost three hours?

A That is correct.

Q Do you remember that?

A Yes.

Q Then he asked you to come back, correct?

A Right.

Q And you came back again, according to the record, on August 13, 1975; is that right?

A (There was a shake of the head in the affirmative.)

Q Do you remember that?

A Yes.

Q And you testified for another hour and a half, do you remember that?

A Yes, I do.

Q So you testified for approximately four hours before the Grand Jury back in July and August '75; right?

A That is correct.

Q And you were asked at that Grand Jury, at the conclusion of your appearance, whether there was any relevant information that came to your mind concerning the investigation of this case; right?

A Any additional --

Q Didn't -- didn't Mr. Katzberg say, now, is there anything else you want to tell the Grand Jury, Mr. Dutra, that might be relevant to their inquiry and to this illegal political contributions plan?

A I believe he did, yes.

Q What did you tell Mr. Katzberg?

A I couldn't think of anything else.

Q That is in the Grand Jury.

A That I couldn't think of anything else.

Q And it is a fact, isn't it, Mr. Dutra, that you never mentioned one word in four and a half hours in two sessions before the Grand Jury about any Wall Street Journal article?

A I didn't mention it.

Q And you weren't asked about it?

A No.

Q When is the first time Mr. Katzberg asked you about the Wall Street Journal article?

A I believe it was yesterday.

Q Tuesday, right?

A (The witness indicated in the affirmative.)

Q And that is the first time that you ever told anybody in this entire world -- withdrawn -- Let's narrow it down.

And that is the first time you ever told anybody from the United States Government that there was a conversation shortly after the article where Mr. Powell said that he was concerned, right?

A (The witness indicated in the affirmative.)

Q Yes, he did?

A Yes.

Q And that conversation you say took place more than six years ago, correct?

A (The witness indicated in the affirmative.)

Q You have to answer for the reporter yes or no.

A Yes, that is correct.

Q O.K.

And that article you say you were concerned about because it talked about cynical practices that corporations use to evade certain laws involving political contributions, right?

A That is correct.

Q And it was a concern to you when you read it?

(The witness indicated in the affirmative.)

Q Answer, please.

A Yes.

Q It was of concern when you were told you were possibly a defendant in this case, when you testified before the Grand Jury?

A Yes.

Q And you never told it to the Grand Jury at any time?

A No, I didn't recall it.

Q And you never told it to anybody in the Government until yesterday?

A That is correct.

Q O.K. Now, you read that article at the time --

I take it you subscribed to the Wall Street Journal and that is how it came about that you read the article the same day that the Journal came out?

A I had access to it, yes.

Q What do you mean by that?

A I didn't have a subscription to it.

Q But how, how did it come across -- how did it occur that on November 19, the date of the article in 1969, that came to your attention?

A Because I had access to it, because there were many subscriptions to the Wall Street Journal in the bank and I read one of them or tried to read one of them each day.

Q This was kept in the library at the bank?

A No.

Q And when you read it you read the part that said that there was an IRS official who had said that there were cynical practices engaged in by corporations where bonuses were granted to employees with the understanding that they were to make political contributions; right?

A Yes.

Q And that was on November 19, 1969?

A Yes.

Q And that is why you asked Mr. Dowd, Hey, I want an increase like all the other officers in the bank that are

participating in the program; isn't that right, Mr. Dutra?

A No, it is not, I never asked for an increase, I asked why I wasn't getting an increase.

Q And that was after you read this article and it concerned you, correct?

A (The witness indicated in the affirmative.)

Q That didn't in any way hesitate you in asking Mr. Dowd why you didn't get a salary increase to participate in the contributions program; isn't that right?

A As I said, I didn't ask for an increase, I asked why I wasn't getting one.

Q You were disappointed that you weren't getting one?

A Yes, sir, it is a lot of money, yes.

Q You were extremely disappointed or displeased that you weren't getting an increase like the others that were participating in the program; isn't that true?

A I was concerned, yes.

Q You were extremely displeased that you weren't getting an increase for participating in the program like the other officers at the bank; isn't that true?

A I think I had mixed feelings about why I wanted an increase or wanted to know why I wasn't getting an increase.

(Continued on next page.)

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Q And that was after you read this Wall St. Journal article: right?

A (The witness indicated in the affirmative.)

Q I'm sorry, you have to answer the question for the reporter yes or no. You have to verbalize your answer, okay?

A I understand.

Q Okay.

And after there was a discussion where you suggested the name the Long Island Public Affairs Club which you fixed in March 1970 where you went to Mr. Driscoll and asked him to draw up by-laws?

A Yes, sir.

Q Did you ever say to Mr. Driscoll, Mr. Driscoll, I read this Wall St. Journal article and it concerned me very much?

A No, I didn't.

Q As a matter of fact, you also on several occasions met with George DeGenaro of the Shea firm; isn't that correct?

A I don't recall ever meeting with George except in company with him at the bank.

Q Do you recall ever talking to George on several occasions?

A I do recall a phone conversation with him, yes.

Q And did you ever say to George anything about the political contributions program?

A I don't think I talked with him about this program. I talked to him about other things.

Q About this lending bill, right, Truth-In-Lending bill?

A Yes, the Truth-In-Lending bill.

Q You never said, George De Genaro, there was a Wall St.Journal article that concerned me, did you?

A No, I didn't.

Q You were not a banker, you say?

A No, I am not.

Q I mean you were not a banker before you were hired at the Security National Bank?

A No.

Q You weren't a banker after you left the Security National Bank?

A No, I wasn't.

Q And you had some problems with the management at the bank, did you not, sir, before you left?

A I would say there were problems.

Q Dissension, you were having friction, personality problems perhaps at the Security National Bank?

A I don't think that is a fair [illegible]ment.

Q When did you leave the bank?

A I think it was in March of 1971.

Q So you were in the bank essentially for two years, right?

A Right.

Q And you were in the business, in the marketing development branch of the bank?

A That is right.

Q And their prime function was to attract new business, right?

A That is right.

Q They were located in a building separate from where Mr. Clifford and Mr. Powell were located?

A That is correct.

Q The two buildings, that is where you were and where Mr. Dowd's office and Mr. Clifford and Mr. Powell's office were were about four blocks away?

A I'm sorry, would you repeat that?

Q You were in the building about four blocks away from Mr. Powell's office, were you not, during this period of time?

A Yes.

Q And with respect to all the meetings that you have

referred to, meetings concerning discussions about the political contributions program, how many did you say you recall took place?

A I said that I met with Mr. Dowd, Mr. Dowd and other people, at least once a week.

Q You met with Mr. Powell at least once a week?

A No, I believe I testified that everyone was not present at all meetings.

MR. RYAN: I have no further questions.

Thank you.

MR. COHN: Your Honor?

THE COURT: All right.

CROSS-EXAMINATION

BY MR. COHN:

Q Mr. Dutra, my name is Irving Cohn, I am David Dowd's lawyer.

You and I spoke on the phone; do you recall?

A Yes.

Q Just shortly before the trial started; do you recall that, sir?

A Yes, I do.

Q And I asked you at that time to please tell me what you knew about this matter. Do you remember me telling you that?

A Yes, sir.

Q And you and I spoke on the phone for about a half-hour, more or less?

A Yes, we did.

Q And at that time you told me what you knew about the matter; is that correct?

A Yes.

Q Now you testified before the grand jury as we have developed on two separate occasions and the last occasion was August 13, 1975, and as I recall you told Mr. Katzberg about a month before July 30, 1975 you got a telephone call from Mr. Katzberg; isn't that right?

A Yes.

Q And he called you at your home or your place of business in Rhode Island?

A Yes.

Q And in the course of that conversation, Mr. Katzberg told you that he wanted you to come in and talk to the grand jury; do you recall that?

A Yes.

Q Did Mr. Katzberg in that conversation also tell you that you had better get a lawyer?

A Yes, he did.

Q And you took Mr. Katzberg's advice, as I recall; did you not, sir?

A Yes, I did.

Q And you went out to get yourself a lawyer?

A Yes.

Q And one of the things that you did to get yourself a lawyer is y- called David Dowd for his help; is that right?

A That is right.

Q And prior to that time -- withdrawn.

During the time that you left the bank, which I believe was somewhere in the early part of '71 -- is that correct?

A Yes.

Q Then you went up to Rhode Island to take care of your own affairs up there?

A Yes.

Q At any time after that, had you ever come down to New York and visited David Dowd?

A I think once I did, yes.

Q You visited him at the Nassau Trust Company when he was then there employed?

A Yes.

Q Would you say you and David Dowd were more or less friendly?

A Well, I visited another close bank friend at the

bank --

Q Well, let us say to the extent that you came to visit him at his place of business --

A I did visit him, right.

Q Then you had this telephone conversation, this other conversation that you told Mr. Katzberg about; right?

A That is correct.

Q Now you were asked by Mr. Katzberg about this conversation that you had with David Dowd involving the subject of your getting a lawyer. Do you remember being asked those questions by Mr. Katzberg before the grand jury?

A Yes.

Q Now you recall, sir, that these conversations took place on August 13, 1975, do you remember that that was the second time that you went before the grand jury; isn't that correct?

A I am sorry, I kind of lost you, could you repeat it?

Q Sure, I will be glad to.

Do you recall that you were asked questions by Mr. Katzberg with respect to this conversation when Mr. Katzberg told you that you had better get a lawyer, and do you remember that being asked of you on August 13, 1975?

Would you like to refresh your recollection

from this (indicating document)?

A I don't understand your question.

MR. KATZBERG: It is a compound question.

MR. COHN: Okay. I withdraw the question.

Q Do you recall Mr. Katzberg called you about a month before you first went to the grand jury and you had a conversation with Mr. Katzberg and in that conversation he said to you, words to the effect, you had better get yourself a lawyer?

A Yes.

Q Okay. And then do you remember you went into the grand jury?

A Yes.

Q You had two sessions at the grand jury?

A Correct.

Q Do you remember the second session when you went there on August 13, 1975?

A I do.

Q All right. And do you recall in that second appearance before the grand jury Mr. Katzberg questioned you about that telephone conversation that he had with you and the telephone conversation that you had with David Dowd immediately thereafter: Do you understand my question now, sir?

A I am not sure that I do. You are asking --

Q Let me withdraw it and I will ask you again.

Do you remember testifying before the grand jury?

A I remember the first part of that, I did discuss, I did talk with Mr. Katzberg about my appearance.

Now you are asking me did I talk --

Q And you went into a grand jury: Do you remember that?

A I do.

Q And you raised your hand and you took the same oath that you took when you took the witness stand today?

A I did that.

Q And then Mr. Katzberg asked you questions.

A Yes.

Q And you gave him answers; isn't that correct?

A That is correct.

Q And you knew you were under oath when you gave those answers; isn't that correct?

A Yes.

Q All right.

And then you came back on August 13, 1975?

A Yes.

Q And right at the end, just before you left and you were excused by Mr. Katzberg, do you remember Mr. Katzberg

putting questions to you at that time concerning the conversation that you had with David Dowd about getting a lawyer: Do you remember that, sir?

A Yes.

Q And do you remember testifying under oath before the grand jury as to what that conversation was with David Dowd?

A Yes.

Q And in that testimony you told the grand jury that Mr. Katzberg had called you and told you that you had better get a lawyer; do you remember that happening?

A Yes, yes, I do.

Q And then you called David Dowd?

A Yes.

Q Right?

A Right.

Q And you talked to David Dowd about getting a lawyer: Do you remember that?

A That is correct.

Q All right.

And do you remember that at the end of your testimony you were excused by Mr. Katzberg and Mr. Katzberg said to you, if there is anything else or anything that you have not had an opportunity to say during either the last

session or this session, or any questions or answers you feel needs amplification in any way or to be further expanded, I want to give you this opportunity to say anything that you want at this time.

Do you remember Mr. Katzberg saying that to you?

A I recall something like that.

(continued next page)

A 2733

CROSS EXAMINATION BY

MR. COHN (continued):

Q And you remember saying, Mr. Kataberg, I tried to give what I remembered about this entire conversation. I don't think I have anything else to say at this time.

Remember that?

A Yes.

Q And you walked out of the grand jury room and met your lawyer outside, Mr. Hoey?

A Yes.

Q That's the fellow you retained to represent you in connection with this matter?

A Yes.

Q And you went back to the grand jury because you remembered something else?

A That's right.

Q And then you went back with Mr. Katzberg again over the situation as to how come you came to hire Mr. Hoey and the conversation with Mr. Dowd?

A yes.

Q And did you ever once, when you were fore the grand jury, before you went out to speak to the lawyer or after, ever tell the grand jury in this conversation about a lwyer, David Dowd told you that the increases given to the

officers were to compensate them for the extra time that they spent and going to dinners?

A Could you repeat the question?

Q Did you ever, at any time, when you were before the grand jury and when you told about the conversation that you had with David Dowd about getting a lawyer, the first time you testified to that and then when you went out and spoke to your lawyer and spoke about it the second time, did you, on either of those occasions, ever tell the grand jury that you had a conversation with David Dowd and he said to you, remember, the increases were given to these officers because they had to attend functions? Ever tell that to the grand jury, sir?

A I don't remember telling them that.

Q You didn't did you?

A No.

Q And when you came back the second time after you spoke to Mr. Hoey and you added something -- at the end of that, Mr. Katzberg said to you -- the last question put to you -- "Is there anything else you wanted to tell us about this?" and your answer is, "No, sir." Do you remember that answer to that question?

A Yes.

Q And there wasn't anything else you omi ted saying,

was there?

MR. KATZBERG: Objection. Argumentative.

THE COURT: Sustained.

Q But is it fair to say that at nc time, even though Mr. Katzberg gave you two occasions, you never told this jury about the conversation with David Dowd?

MR. KATZBERG: Objection. Asked and answered.

THE COURT: It's cross exami tion.

Q Is that a fact?

A That's a fact, sir.

Q Isn't it a fact also that in almost two hundred pages of testimony that covered four and a half hours before the grand jury on two separate occasions, you never once made reference to a Wall Street Journal?

A That's a fact.

Q And when you left the grand jury the first time, Mr. Katzberg gave you a similar opportunity to volunteer to tell the grand jury anything else you could recall that you had not told them in the earlier session; isn't that a fact, sir?

A He asked me that, yes.

Q QAnd you still didn't tell him about the Wall Street Journal article?

A No, I didn't.

Q And the first time you discussed the Wall Street

Journal article with Mr. Katzberg was on Tuesday?

A That is correct.

Q Now, Mr. Dutra -- by the way, Mr. Dutra, you were hired by the bank on January 2, 1968; is that correct, sir?

A That is correct.

Q And do you know what your starting salary was?

A 35 thousand, I think.

Q You were not a banker at that time; were you?

A No, sir, I wasn't.

Q Your prior expertise was in public relations?

A That's not entirely accurate.

Q Well, what was your prior expertise?

A I'd been involved in the Long Island business community.

Q Doing what?

A Mobilizing the business community to get new industry and to participate in legislative affairs on behalf of the business community.

Q Involved with the government?

A With the government.

Q Involved with the local politicians?

A Not so much local.

Q Did you know them?

A A few of them. Mostly state and federal.

Q Did you get a raise after you went to the bank and started at 35 thousand a year?

A Yes.

Q Do you know when you got your next raise?

I have a paper here. This is a copy of your VC card. I don't know if it is in evidence or not.

Did you get a raise in 1970?

(Document shown to witness.)

A Right.

Q To $38,000?

A Correct.

Q And you got a raise on January 4, 1971?

A Right.

Q $40,000?

A Yes.

Q What were you making when you left the bank?

A $40,000.

Q And you had a conversation with Mr. Dowd where you told Mr. Dowd that you wanted to be reimbursed and Mr. Dowd said to you, in effect, you are making enough money. You don't need reimbursement.

A Yes.

Q As a matter of fact, you asked for a salary increase?

A Yes.

Q And he wouldn't give it to you?

A He said I was making enough to contribute.

Q Now, do you recall what you told Mr. Katzberg on direct examination that in January 1970 you learned from talking to Mr. Hart and others that some officers had been give n salary increases; is that correct?

A Yes.

Q And that is how you found out for the first time; is that right?

A Yes.

Q And as a result of that you then went to David Dowd and said, in effect, why can't I get a salary increase?

A In effect, that's what I said.

Q And this conversation with Dowd probably took place in February or March of 1970?

A I would say so.

Q A month or two after you spoke to Hart and the others?

A Um-hm.

Q Mr. Katzberg showed you the Wall Street Journal article and made reference to the fact that some companies give bonuses and he elicited from you an answer this had you all upset; isn't that right?

A I don't think that is the word -- concerned.

Q You were concerned about the legality at that time because of the bonuses?

A Yes.

Q You were concerned about the legality of the bonuses in NOvember 1969 tell this court why you were concerned in 1969, November -- why you were concerned when you didn't find out there were increases until two months later in January of 1970 --

MR. KATZBERG: Objection.

THE COURT: You may answer.

A Repeat it, please.

Q If you didn't find out about the salary increases until January 1970, tell the Court and jury why you got upset about the bonuses in NOvember of 1969.

A Mr. -- I'm sorry -- your name?

Q Cohn.

A Mr. Cohn, I tried to testify to the best of my ability to dates which took place five, six, seven years ago and if I made a mistake in dates it wasn't intentional.

(continued next page.)

TR
pm

CROSS EXAMINATION

BY MR. COHN (Cont'd):

Q Didn't you tell the Grand Jury that the first time you found out about reinbursement was January 1970? Didn't you tell that to the Grand Jury July 30, 1975?

MR. KATZBERG: Page , please.

MR. COHN: Page 60.

Q Would you like to see it and refresh your recollection?

(Document handed to witness.)

Q Start reading from here, sir, and go over to the next page. (Indicating)

A Well, I repeat the statement I just made to you, Mr. Cohn.

What I said in the Grand Jury testimony was, I can't recall --

Q Keep going.

A -- obviously a date but I would say somewhere in the vicinity of a year after I was with the bank.

Q When did you go to the bank?

A January 1st.

Q What date is the year after January 1st, 1979 ---

MR. KATZBERG: The answer was, "the vicinity."

A I'm not trying to deceive anyone.

I said, "The vicinity" and that is the best I recollect.

Q And then Mr. Katzberg reminded you it was around January 1970 and you agreed and you saidthat would be essentially correct; is that right?

A Mr. Cohn, I tried to give the dates the best I could remember them.

Q By the way, when you were at the Security National Bank you did more for the bank than just concern yourself with political contributions, did you not?

A I would like to think so.

Q What did you do for the bank for the money they paid you?

A I was responsible for the advertising which had a budget at that time, I think, of close to a million dollars; public relations programs, which had a budget of about a quarter of a million dollars and I was involved in product development which was important to the bank at that time.

I was involved in community affairs and contributed my time on behalf of the bank to the Long Island Housing Development Corporation.

I was involved in local Chambers of Commerce and their efforts on behalf of the community; fund raising

campaigns for a variety of organizations, important to the Long Island economy.

I was involved in assisting the management of the bank in programs designed to assist management in assimilating new people coming into the bank.

Q With all these things you were doing, when did you have time to have all these things you were telling us about --

MR. PATTISON: Objection.

MR. KATZBERG: Objection.

THE COURT: Argumentative. Sustained.

MR. COHEN: Would you bear with me for a moment, please, your Honor?

THE COURT: Surely.

(Pause.)

Q Now, do you remember when Mr. Ryan questioned you about your reaction when Mr. Dowd wouldn't give you the wage increase and didn't you tell the Grand Jury that you kicked up a fuss when you didn't get it?

MR. PATTISON: Page?

MR. COHN: 77.

Q Would you like to refresh your recollection?

A If you don't mind, please.

Q Look at page 77.

A 2743

(Document handed to witness.)

A That's what I said.

Q You said that: I kicked up a fuss about it -- isn't that right?

A Yes.

Q You were under oath when you made that statement in the Grand Jury?

A That's my testimony, yes.

Q Wasn't there reference to the fact that to your extreme displeasure you were not getting the wage increase -- look at that, please.

(Document handed to witness.)

A Well, of course, those were not my words although I agree to them there.

Q They were Mr. Katzberg's words and you agreed to them?

A Yes.

Q Mr. Katzberg in effect, question you about your extreme displeasure in not getting the wage increase and you went along with it?

A Yes.

Q You were under oath at that time, were you not?

A Yes.

Q And that was a truthfull statement?

A That is correct.

MR. COHN: I may be finished. May I take just a moment, your Honor?

(Pause.)

Q Just one final question.

Mr. Dutra, who selected the name Long Island Public Affairs Club?

A I believe that was my idea.

Q And you had originally broached the subject of the Long Island Public Affairs Club to senior management of the bank, the concept of the club?

A Yes.

Q You had prior experience in such an entity?

A That is correct.

Q You had organized such a political affairs club when you were in Pennsylvania?

A Yes.

Q And then there came a time when Mr. Dowd told you, within a few months after the Long Island Public Affairs Club got started, it had to be terminated?

A That is correct.

Q As a matter of fact, you had not even gotten the club off the ground when you were told it was being terminated?

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A That's right.

Q And Mr. Dutra told you it was being terminated because the Shea firm wanted the individual officers to make their checks directly to the recipient?

A That is correct.

Q This was sometime in December of 1970?

A I believe that's about right.

Q You were unhappy over the fact that your grandchild was now being discontinued two or three months after it got started; isn't that a fact?

A I thought it was the right idea.

Q And you expressed your extreme displeasure about the fact that now the Long Island Public Affairs Club, something you were involved with, was now being discontinued?

A I think I declined "extreme displeasure" but other than that, that is correct.

MR. COHN: Your Honor, I have no further questions of the witness.

THE COURT: Any questions?

MR. NAFTALIS: A couple.

MR. COHN: Your Honor, could we have a minute?

THE COURT: We will take a short recess.

(Recess taken.)

(Cont'd on next page.)

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A 2746

Dutra-cross/Naftalis (Rebuttal)

(At 4:08 o'clock P.M. the jury returned to the courtroom.)

J O S E P H D U T R A, called as a witness having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: All right, Mr. Naftalis.

MR. NAFTALIS: Thank you, your Honor.

Good afternoon, Mr. Dutra.

CROSS EXAMINATION

BY MR. NAFTALIS:

Q You played a role, did you not, in the contribution system in terms of asking certain officers about whether or not they wanted to attend certain functions, is that correct?

A That's correct.

Q And they were asked if they would attend these functions, and they had a choice as to whether or not they wanted to, is that correct?

A Yes.

Q It was a voluntary thing, is that correct?

A I don't think anyone declined very often?

Q Pardon?

A I don't think anyone declined very often.

Q But no one was ever told to do it? They had an

opportunity to say "yes" and they had an opportunity to say "no"? Isn't that correct?

A I guess they had that opportunity.

Q As a matter of fact that is what you told the Grand Jury at page 40:

"Question : Was it a matter of asking them or telling them, sir?

MR. KATZBERG: Your Honor, the witness has already said that.

THE COURT: All right.

Now, Mr. Dutra, I think it was brought out that there came a time in the summer of 1975 when you learned, did you not, that you were a potential defendant in a case that MR. Katzberg was investigating, is that correct?

A That is correct.

Q And you were told that when you went before the Grand Jury, is that correct?

A I am sorry. I didn't hear you.

Q You were told that when you went before the Grand Jury?

A Yes.

Q And you were told that when you spoke with Mr. Katzberg at that time, is that correct?

A That is correct.

Q Then there came a time after that when you were told either directly by Mr. Katzberg or through your attorney that although you could be prosecuted in this case, that the Government didn't intend to prosecute you, is that correct?

A I can't recall anyone telling me that the Government did not intend to prosecute me.

Q Is it not a fact, sir, that you were told that although you could be charged with a crime in this matter it was the present intention of the United States not to prosecute you?

A Who would have told that to me?

Q Mr. Katzberg, or Mr. Hoey, your lawyer, relating to you what Mr. Katzberg had told him.

A The present intention, yes.

Q Mr. Hoey told you, did he not, that you -- after he told you that -- that you should cooperate with the Government?

A He never told me that.

Q He told you that you should talk to Mr. Katzberg and testify, is that correct?

A Yes, that is right.

Q Is it not a fact, sir, that it was only after you were told that you would not be prosecuted in this matter

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that you told Mr. Katzberg about the Wall Street Journal, is that correct? It came afterwards, isn't that a fact?

A That is not right.

Q Did you tell him about the Wall Street Journal article only yesterday?

A I didn't tell him about it. He asked me about the Journal and we discussed it.

Q You first disclosed any knowledge you allegedly had about it, is that correct?

A Yes, that is correct.

Q Is that correct?

A Yes.

Q You were given a promise about the Government's intention not to prosecute you prior to yesterday, is that correct?

A That is not correct.

Q Were you only told about it yesterday?

A No, I wasn't promised by anyone, I can assure you of that, sir, and I will not be led to say that.

Q You were never told at anytime by either Mr. Katzberg or your attorney that it was the intention of the United States not to prosecute you in this matter?

A Sir, my attorney did say to me that it was the present intention of the Government not to prosecute me but

he made it very clear that I was still in the same situation. And I was made no promise by anyone, I can assure you of that.

Q And it was advisable for you to continue to speak with Mr. Katzberg as a result? Isn't that a fact?

A Yes sir. I was never advised --

Q The answer is to my question?

A Repeat it, please?

Q So he told you it was advisable for you to continue to speak to Mr. Katzberg about this case?

A That is correct.

MR. NAFTALIS: Thank you.

MR. BANNIGAN: I have no questions, your Honor.

THE COURT: All right, any other questions?

MR. KATZBERG: No further questions.

THE COURT: Step down, thank you, sir.

Next witness.

(Witness excused.)

MR. KATZBERG: The Government calls Bertram Driscoll, your Honor.

B E R T R A M E. D R I S C O L, called as a witness, having been first duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

going to distinguish between wilfull and knowing violation. The defendants had to know what they were doing wrong. The issue in this case is whether what they were doing was wrong.

Your Honor, I don't know how a jury can draw such a fine line.

I think the result of what the Government will do here is that -- and the charges demonstrate tis beyond a reasonable doubt, it says, We do 't have proof of wilfull violation then you can convict for a misdemeanor instead of acquit, and that is what they are in their charge saying.

THE COURT: But it does of necessity call for what I call a twofold type charge, if the jury finds that the moneys that were given as salary increases became the moneys of the employees, then it may go differently, whether there is a statute or no statute, because it is their money and they have a right to give it away. Now you don't have a problem under that situation of a violation of the statute because the money is theirs and anybody can do anything they want with their own money.

I don't think any law in America can change that, if it is your money you may do anything you wish.

THE CLERK: Case on trial, United States against Clifford, et al.

THE COURT: I will read my decision into the record and then give a copy of it to the parties. You will have a copy immediately after.

The Court's opinion to be read into the record is as follows: The Government has requested this Court to charge the jury that if they should find the defendants not guilty of the Section 610 felony charge by reason of lack of wilfulness, they may nevertheless find the defendants guilty of a non-wilful violation of section 610. This request was made pursuant to a Federal rule of criminal procedure, 31 (c). Defendants have objected to this request.

This Court has listened to the arguments and carefully examined the applicible case law. The two leading cases on this issue are United States against Harrary, 457 F second 471 (Second Circuit, 1972) and United States against Brewster, 506 F second 62 (District of Columbia Circuit, 1974).

In Harrary, the United States Court of Appeals for the Second Circuit concluded that: the Prosecutor cannot go to the jury over the objection of the defendant, on both the lesser and greater offense unless an element which distinguishes the two is disputed." 457

F second at 471. Where the additional element is in dispute, however, the Court held that it would not be reversable error to submit the lesser included offense to the jury. 457 F second at 471.

This principle was also embraced by the United States Circuit Court of Appeals for the District of Columbia in United States against Whittaker, 447 F second 314 (District of Clumbia Circuit 1971) and in United States Against Brewster, supra: "There must be some evidence which would justify conviction of the lesser offense." 447 F second at 317.

Accordingly, this Court must examine 18 United States Code Section 610 in light of the evidence adduced at trial in order to determine the correctness of charging the lesser included offense in this case. The applicable portion of 610 is as follows: "Every officer or director of any corporation...who consents to any contribution...by the corporation...in violation of this section shall be fined not more than one thousand dollars or imprisoned not more than one year, or both; and if the violation was wilful shall be fined not more than fifty thousand dollars or imprisoned not more than two years, or both."

The Government's main thrust in this trial has been to prove the wilful violation of this section.

The defendants have countered with the advice of Counsel defense alleging that their actions were based on Counsel's approval of the plan.

If the jury were to believe the defendants' testimony, it would have to acquit the individual defendants of the felony. This Court must determine what effect the jury's belief in defendants' version would have on the misdemeanor violation, if charged. Although wilfulness is not an element of the misdemeanor violation, defendants can be convicted of the misdemeanor only if they knowingly caused the bank monies to be contributed. the statute does not assess strict liability regardless of scienter. Cf United States against Finance Committee to Re-elect the President, 507 F second 1194, 1197 (District of Columbia Circuit, 1974). If the jury believes defendants' testimony that they relied on counsel's opinion that salary raises become the property of officers and do not constitute bank money, then the jury could not convict the individual defendants of knowingly causing contributions of bank money.

Therefore the proof offered in this case both by the prosecution and the defense would not permit the jury to adequately distinguish between the elements of the felony and the misdemeanor. Cf. Sansone against

United States, 380 U.S. 343, 350, n. 6 (1965).

In addition, this Court previously directed that all parties submit their requests to charge by the end of the Government's case. Although the Government was aware at that time of Defendants' intention to use an advice of counsel defense, it failed to request the lesser included offense charge.

to the extent that they relied on the Government's request to charge, the defendants would be extremely prejudiced if this Court were to change the lesser included offense despite the Government's failure to make a timely request.

In view of all these circumstances, this Court concludes that the best exercise of its discretion would be to charge only the felony offense. Accordingly, the Government's request to charge the misdemeanor is denied.

This Court is aware that the nature of this decision might normally preclude the Government from securing appellate review. Accordingly, if the Government wishes to bring a mandamus application before the United States Court of Appeals for the Second Circuit, this Court will adjourn further proceedings until such time as the application can be reviewed.

That is the Court's determination.

A 2756 (The following occurred out of the hearing of the Jury.)

MR. RYAN: With respect to the charge with the consent of my co-counsel I'd like to call some matters to your attention.

My packages are not numbered.

THE COURT: That's all right.

MR. RYAN: With respect to the second page where it says your Honor is going to read the indictment, we ask you only to read the overt acts of number 12, post- dating September fifth, '72; since the Jury has to find that overt acts were committed after September fifth,' 72, they might get confused by reading the overt acts prior thereto.

In view of the statute of limitation problem, the Jury must find an overt act was committed after September fifth, 1972.

Otherwise they are barred by the statute of limitiations. We make that request.

MR. PATTISON: They show whether or not there was such a thing.

THE COURT: Yes. I agree with that.

MR. RYAN: I am on the five elements, now, your Honor.

THE COURT: Yes. I have it. With respect to

item number two, we request in the interest of clarification that it read the -- that it read that the contribution charge in the specified count was actually made by the bank.

THE COURT: I see nothing wrong with that.

MR. PATTISON: Rather than by the bank, using bank funds as a much more accurate phrase.

THE COURT: All right.

MR. PATTISON: Using bank funds.

THE COURT: With bank funds.

MR. RYAN: As to element number four, I think it would be more appropriate perhaps to read in terms of the statute, namely the defendant or defendants named in the specific ount caused or consented to the making of the contribution by the bank.

THE COURT: All right.

We'll change that.

MR. PATTISON: Making --

THE COURT: Caused or consented to.

MR. RYAN: Caused or consented to the making of the contribution by the bank.

MR. PATTISON: Using bank funds, your Honor. I think you have said it in number one and number two.

THE COURT: Yes.

XX 12 A 2758

MR. RYAN: Numbe[illegible]e, when you refer to knowingly and willfully, we would like you to add "As I define those terms," your Honor.

THE COURT: All right.

MR. RYAN: The following paragarph, the second element is that the contribution charged in each count was actually made by the bank, or with bank funds, either way.

THE COURT: Was actually made with bank funds.

MR. RYAN: Now, the sentencing beginning counts three to nine. We would now like to state the defendant's contention that the defendants contend when the salary increases were given and money received by the officers, the money became the officers and not the bank's money.

We'd like to have both sides stated. We'd like you to state that the defendants allege --

THE COURT: I see nothing wrong with that.

MR. RYAN: When the salary increases were given and money received by the officers, the money became the officers' money and not the bank's money.

MR. COHN: And was no longer bank's money.

THE COURT: When salary increases were given became the officers' money and no longer bank's money.

MR. PATTISON: This is not the law.

MR. BANNIGAN: It most certainly is.

THE COURT: If it's not there -- if it's not the bank's money, they can do what they want with it.

Do we disagree on that?

MR. PATTISON: Yes.

THE COURT: This is cases and offenses by the defendants that we received salary increases, and their defense is it was our money.

If that's their defense they have a right to know that's their defense.

MR. KATZBERG: If it's a defense to the statutes --

THE COURT: The statute can't cause something that is a violation, even if it does say so.

MR. PATTISON: Nowhere does it -- nowhere does the statute say that if it's the officers' funds that it couldn't be a crime.

The point is the bank's causing the contribution to be made.

Now, if I would point out, if technically title passes that still can be a crime, such as if the officers were reimbursed then it's their money in the first instance, going clearly you would say that's

a crime.

A 2760 THE COURT: I think you are right in saying if the bank gave the increases and caused it to be given away, it's improper.

MR. PATTISON: Now we're saying i it's the officers' fund then it's not a crime, that's not quite accurate.

THE COURT: I wasn't going to say that.

The defense -- I was going to say when salary increases were given.

MR. PATTISON: That it becomes the officers' fund and therefore it was not a crime.

MR. NAFTALIS: I disagree with Mr. Pattison. It's an issue of fact as to whose money it is and the jury will have to determine it.

MR. PATTISON: I would submit I think the major point I'd like to make on this is that if there view of the law is accurate then a reimbursed personal contribution is not a crime and we --

MR. RYAN: Let the Judge write what he is going to write and we'll see if it's acceptable and reregistered our objections.

THE COURT: All right.

It would read at this point, as to count three to nine, the Government alleges that the bank made the contributions indirectly by giving certain of

it officers salary increases, which would then be used to make contributions in behalf of the bank.

The defendants claim that they were salary increases and not funds caused by the bank to be given as political contributions in violation of the statute.

MR. PATTISON: Fine.

(Continued on the next page.)

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MR. RYAN: Good.

MR. COHN: May I request when you say the defendants, was salary increases and thus became officers' money --

THE COURT: No. I think this succinctly places the issue before the jury and it will go to the jury that way.

I will have that page done over with that in there.

MR. RYAN: With respect to the segregated fund, this is a permissible part of the statute and we'd like it to read that section 610 permits a bank to maintain and administer --

THE COURT: Where is this?

MR. RYAN: It's at the top.

THE COURT: Yes, I see it.

MR. RYAN: Before you talk about what the statute permits and prohibits.

THE COURT: All right.

MR. PATTISON: I would just point out there is no evidence in this case that would allow you to charge this whole point.

There was no such fund set up ever within the period --

THE COURT: The Betty Jaeger account.

MR. PATTISON: The -- before the statute of limitations that ended in 1970. That's not a fund. That's not what they mean here by 610.

MR. NAFTALIS: Jaeger and Long Island Public Affairs.

MR. PATTISON: There was and that ended in 1970. And this amendment only came in in '72.

MR. BANNIGAN: The Supreme Court merely said the --

THE COURT: I will have to deny that, Mr. Pattison. I will use it permits a bank.

MR. RYAN: As we continue on the same page, I know you have a sentence, the funds are the personal funds of the contributors, they may not be solicited by coercion.

I know the statute talks -- Well, instead of the word coercion we would request that solicited by financial reprisal or threat of financial reprisal. That's how it is termed in the statute.

THE COURT: No, I will let that stand.

MR. BANNIGAN: I ask in place of the word coercion just read what the statute says.

MR. RYAN: The point is some of these officers testified they felt that they had no choice.

THE COURT: Well, that's coercion. Coercion

is you better take it or do it or else.

A 2764 MR. RYAN: The statute says as long as they weren't injured by physical force, job discrimination or --

THE COURT: Coercion is exactly what I speak of. It doesn't have to be a physical situation. It can be what we call an intended physical situation.

For instance if you don't do it, Godknows what is going to happen to you. You don't have to assault a person, so to speak.

I will let it stand. You can take exception to it.

MR. RYAN: Now, we'd like to proceed, on the same page to the sentence that ends whether the officers participated voluntarily or not. is immaterial and then in lieu of the introductory clause on the next paragarph, we would rather have it read in the interest of clarify, on the other hand if you find that the contributions were made from the officers' personal fund, then you must consider whether or not the funds were soliciated by coercion --

THE COURT: Yes, I see that.

MR. RYAN: Then you must consider -- this negative statement we found might be confused by the jury.

a lot of cover. I have the same right as any defendant.

THE COURT: Of course you have a right. All right, I'll decide to give you three-quarters of an hour at this time. If I think you need an hour I can give it to you.

You can only cover what everybody else has already covered, and it's the same statements, and you have a right to do it, but there comes a time when you must cease and desist.

All right, I'll give you three-quarters of an hour. I think an hour in your case is too much.

(Jury in.)

THE COURT: All right, Mr. Bannigan will sum up.

MR. BANNIGAN: Thank you.

Judge Costantino, counsel for the Government, fellow defense counsel, Mr. Ventura, ladies and gentlemen of the jury, on behalf of my client, Security National Bank, I would like to thank you for the attention and patience you have shown throughout this long and frequently tedious trial.

I express my appreciation to you primarily because I have found as a trial lawyer, and very firmly come to believe, that of all the people

2766 involved in a criminal case -- and that includes the judge, the lawyers for the Government, the lawyers for the defendant and the ladies and gentlemen of the jury, it is you men and women of the jury who have the most taxing role to play in this proceeding. Unlike the judge and the attorneys for either side, your task is the most onerous because two months ago you took an oath, an oath to try this case without fear or favor to either side and to return a verdict based exclusively on the evidence. You agreed at that time to perform a sacred obligation which few of your neighbors and fellow citizens will ever be called upon to undertake.

In early March of this year, when you took your oath, you swore to become the ministers of justice in the case of the United States against Patrick Clifford, Frank Powell, David Dowd and Security National Bank. As ministers of justice society has placed in your hands the exclusive but awesom power to determine forever the fate of three of your fellow citizens and the bank for which they worked.

This power, which is exclusively yours, can be taken away from you by no man, and that includes Judge Costantino, the Government counsel and counsel

for the defendants.

Some believe the obligation to perform that function is solely yours, that of the twelve men and women of the jury.

In comparison to your task in this case the duties of the judge, the lawyers for the Government, the lawyers for the defendants are far less burdensome, and in the end of significantly less importance to society.

Indeed when this case is over history will not record what Judge Costantino did or did not do in this case nor what the Government's counsel or the defense counsel did or did not do, or failed to do in this case. History will record solely what you twelve men and women of this jury did when the case is submitted to you sometime later today.

History will record your action in this case in either the most horrifying word these defendants have ever heard, "Guilty," or in two words, "Not guilty," which will restore to the defendants in this case their reputations and good names in the community.

I submit to you that based on the evidence in this case justice will be ill served if following

your deliberations your foreman, Mr. Ventura, returns to this courtroom and is required to publicly state that you, the ladies and gentlemen of the jury, find any of these defendants guilty of anything.

Now, I say that to you, ladies and gentlemen, not only as an advocate on behalf of a client, but as a citizen like every one of you, who has listened these many, many weeks to the evidence presented in this case, and as objectively as humanly possible come to the conclusion that the Government has failed to meet its burden of proof, proof beyond a reasonable doubt.

I say this to you for many reasons, any one of which might if accepted by you require you to return to this courtroom with a not guilty verdict if you believe the Government has failed to prove beyond a reasonable doubt that any crime whatsoever was committed in this case.

And I say that because this is really an extraordinary case, because you will have to determine not only whether these defendants committed a crime, but first whether any crime at all was committed.

This is a relatively unique situation for you

as an American jury to find itself in. It is unique because in the ordinary case such as a robbery there is no question that the robbery took place. The only question for the jury is did the Government prove or fail to prove beyond a reasonable doubt that the defendant on trial committed the crime charged. Unlike the ordinary case, where a clearly recognized crime has occurred, what we have charged in this case is a theory, a theory devised by Mr. Katzberg, a theory based on what Mr. Katzberg views the law to be, and not perhaps what it is, a theory which even DeGenaro's testimony shows is unsupported by a single case, a theory which DeGenaro's testimony shows is based on a statute which was on the books for over 50 years and was never enforced against a national bank or any employee of a national bank.

Indeed the testimony from that witness stand from Mr. DeGenaro's mouth in uncontradicted that this is the first case where a citizen of the United States has ever been charged for making an illegal political contribution where the charge is premised on purchasing tickets to political affairs.

And forgetting if you can that this is a unique and novel prosecution, what is it that

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Mr. Katzberg contends is the crime here? In plain and simple language, he contends that it is an indirect political contribution for a bank to increase the salaries of its officers and ask the officers to use the salary increase for the purposes of purchasing tickets and things of that nature.

Assuming -- and I can assure you for the moment that I don't -- that this is a proper theory, has Mr. Katzberg proven it beyond a reasonable doubt? The answer to that question is a definite and definitive no.

He has not proven it because in order to do so he must prove beyond a reasonable doubt that the monies these officers received never became their property; that is, he must prove beyond a reasonable doubt that the officers had no dominion and control over these funds, that although the officers were given this increase in the form of a salary increase, the officers were required to return it to the bank.

He must prove beyond a reasonable doubt that the officers had no right to spend these funds as they saw fit.

MR. KATZBERG: Your Honor, I'm going to object to Mr. Bannigan's statement on the law.

THE COURT: Yes, don't charge on the law but make statements of fact on the evidence.

MR. BANNIGAN: I submit that it is an issue here.

THE COURT: That's exactly the issue that is going to be submitted. It's a matter of law. It has nothing to do with the summation. That's the Court's prerogative.

MR. BANNIGAN: HAs Mr. Katzberg established beyond a reasonable doubt that these funds were not the property of the officers? I submit to you ladies and gentlemen that he has not, and that the evidence supports the defendants' contention that once these funds were given to the officers they became their property to do with as they saw fit.

Now, before I go and examine the evidence let me assure you I do not dispute the Government's contention that the salaries were increased so that contributions would not be a financial burden. Where the Government and the defendants part is at the stage where the officers received the money. The Government contends that it remained the bank's. The defendants contend that it was the officers'.

Now, this is a crucial dispute, for unless

Mr. Katzberg can prove his theory, he has no case.

Now, whom does the evidence support? Does it support Mr. Katzberg's theory or does it support the defendants, who contend that once these officers received that money they had the right to do with it as they saw fit, whether to make contributions or not to make the contributions.

The evidence, I submit, on the question supports the defendants, and the prime example of that is the Government's star witness, Mr. Casey. You will recall that Mr. Casey was a principal manager of this club. In 1971 he agreed to participate in the club and received a $2,000 salary increase. IN his first year in the club, however, Mr. Casey contributed a total of $720. $200 of that sum went to the Huntington Democratic Committee, which supported Mr. Casey's own candidacy for office.

In 1972 Mr. Casey contributed absolutely nothing. In 1973, up to March, when he left the Security National Bank, he continued to contribute absolutely nothing.

Notwithstanding his failure to contribute, however, he nevertheless continued to receive the full salary raise and was never asked to give one

penny of that money back to the bank.

And the proof of this, ladies and gentlemen, comes from Mr. Casey's own words, which can be found at pages 1443 to 1444 of the transcript. If I had the time I would read it to you.

Thus in his entire time with the club Mr. Casey received approximately $4,400 and contributed a total of $500, forgetting the $200 contribution to his own candidacy, which cannot be considered a bank contribution.

Based on Mr. Casey's own testimony, the money he received from the bank was his to do with as he darned well saw fit, and he did with it as he saw fit.

(continued next page)

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There is further proof, though, on Casey. You will recall that Casey refused to contribute to Republicans. Ladies and gentlemen, if this money was not Mr. Casey's but belonged to the bank, what right did he have to refuse to contribute to anybody the bank selected? The answer is none.

The proof however is that he contributed to only Democrats. And that we submit supports the proposition that this was his money.

There is additional proof on this subject. Mr. Maass, another witness called by the Government, received a $1700 salary raise. He became ill at one point, was out of the bank for three months. He used the money to cover his medical expenses.

He testified that nobody ever asked him to make that up, nobody. And he didn't make that up.

Ladies and gentlemen, what right did he have to use that money for his medical expenses if it wasn't his? The answer is he used it because it was his.

Mr. Fach, another witness called by the Government, he stated at pages 1117 and 1121 through '22, he testified that he contributed only to organizations and committees he found acceptable. If it wasn't his money, ladies and gentlemen, what right did he have to select a committee? Again the answer is

he had no right, yet he did select the committees.

I submit that is indicia that it was his money.

MR. Vandermark is another example. At page 860 of the transcript he testified all of his contributions were made to parties in Nassau and Suffolk County because he lived there and preferred to give his "contribution" to those organizations.

Again, what right did Mr. Vandermark have to select the organizations that this money was going to, if it wasn't his? The answer is no right. The fact that he did, it was his money.

Another witness, Mr. Dowd, also for the Government, testified at page 1621 that he only made contributions to Democrats because that was his choice. Once again we must ask the question: If the money wasn't Mr. Dowd's, what right did he have to choose that it would only go to Democrats? The answer again, no right.

And Dowd further testified that he stopped contributing and -- this is at page 1612 of the transcript -- in early 1973 the evidence is clear that he continued to receive salary raises, right up until the time the bank went out of business in 1975.

Ladies and gentlemen, can you seriously contend

A 2776 that this wasn't his money and this wasn't a permanent salary increase, that he had the right to do with it whatever he wished once he received it?

Ladies and gentlemen, what the bank had in this situation when they gave these raises to the individuals was nothing more than a hope, a hope that these officers would use that money to make contributions, and when they didn't, that's just tough for the bank. The people still got the money, and the evidence of that is uncontradicted in this case.

Not a witness has testified that he ever lost that raise when he stopped contributing. Not one.

Mr. Barrie, another witness called by the Government at page 1972, he stopped contributing in late 1973 but thereafter continued to receive the salary raise and used it for his own purpose. How can the Government possibly contend, and make a credible argument, a plausible argument, that these raises were not permanent and that the monies represented by these raises did not become the property of the officers? They can't.

And what did the officers who were specifically asked say about whose money this was? Mr. Corriss at page 2573 -- I'm taking the questions from the transcript because it saves time, ladies and gentlemen --

"Question: Whose money did you use to make these contributions?

"Answer: My wife and mine."

And of course when Mr. Corriss stopped contributing he too continued to receive the money, and he continued to receive it until he left the bank.

At page 3191 of the transcript Mr. Coulson gave the same answer:

"Question: And whose money did you use to make political contributions that you made after having spoken to Mr. Chadwick?

"Answer: It was my money."

Similarly, page 3241 of the transcript, Mr. McNierney gave identical testimony:

"Question: What was the source of the monies from which you made the contributions, whose money was it?

"Answer: The money I got paid from the bank.

"Question: Your own money?

"Answer: Yes."

And you may also recall, ladies and gentlemen, that Mr. McNierney became seriously ill at this bank and was out for eight months, and during that period of time he never made a contribution, and the proof is uncontradicted in this case that he never made that

$800 up, and that nobody ever asked him to make that $800 up, and they didn't ask him because they didn't have the right to ask him. Was that really the bank's money or was it Mr. McNierney's money?

And again, page 3656 of the transcript, Mr. Stella answered a question in virtually an identical fashion:

"Question: Whose money did you use to make those contributions?

"Answer: My own funds."

Similarly, Mr. Hackett, whose testimony you recall was stipulated to. We read his testimony into the record; that means the Government and the defendant agreed that he would say the following things. They don't agree that it's the truth, but we agree -- neither side agrees that it's the truth, but we agreed that he would say it. It's for you to determine whether it is the truth.

"Mr. Hackett would testify that he used his own money to make the contributions and deducted on his federal income tax returns the contributions to the extent allowable as political contributions."

Would Mr. Hackett have dared to have taken these contributions off his federal income tax return if it wasn't his money? Would he expose himself to tax fraud? The answer is no.

We submit to you that the deduction was entirely proper since the money was indeed Mr. Hackett's as he saw fit.

Finally, Dowd, Powell and Clifford testified once these funds were given to the officers, it was theirs, and if they stopped contributing, the bank was out of luck.

We have a minimum of thirteen bank officers, almost half the number who testified at this trial, testified they treated the money as if it was theirs, used it as if it was theirs, or expressly stated that the money was indeed theirs.

When you consider this question in light of the evidence of these thirteen witnesses, don't you have to ask yourselves how can Mr. Katzberg contend these moneys at all times remained the property of the bank when virtually half the witnesses, both Government and defendants', testified the money was theirs or used it if it was theirs and if they didn't use it to make contributions they kept it.

Can Mr. Katzberg look you straight in the face and tell you you should convict these defendants because he has proven beyond a reasonable doubt that the money was not the officers'? If he can do that,

the only possible conclusion is Mr. Katzberg does not know the difference between fact, which is what the testimony has proven, and fiction, which Mr. Katzberg is trying to have you buy.

The evidence is certainly stronger. It shows each officer stopped contributing in 1974 and each officer received their salary increase until the bank went out of business a year later, in 1975.

How does Mr. Katzberg counter these witnesses? He identified two witnesses who kept their raises separate from their other funds because they put it in savings accounts. This disparity, two witnesses for the Government and at least thirteen for the defendants proved beyond any question that Mr. Katzberg's theory doesn't hold water. It proves Mr. Katzberg's theory is so weak he can only try it out on a defunct bank, two senior citizens, and a man at fifty-five years of age is finished. It is a theory which is offensive for this country's sense of justice.

There is no doubt that the defendants treated the money as if it was the officers'. Witness the acts of Mr. Steven, who sent out three bank checks for $5,000. What did Mr. Clifford do about that?

He was furious and he made the officers pay it back.

Mr. Katzberg's theory that the money was always the bank's, why go through the charade of paying it back? The evidence supports this theory one hundred percent.

There is additional overwhelming proof that no crime was committed in this case. Mr. Fretz, the witness, the Government called him and you will notice that he was at that time and is to this day an attorney at law, yet he stated, "I joined this club totally voluntarily and accepted the raise."

Would he as an attorney have accepted this raise if it was contrary to law? Even Mr. Casey, who testified under oath before the grand jury that he thought it was legal so long as the individuals made the contributions. Indeed, until Mr. Katzberg told him sometime thereafter that in his opinion, Mr. Katzberg's opinion, it was illegal, Casey never thought it and never said it.

The New York law journal strongly suggests that this is not a violation of law. You read this argument, take it into your room with you and you will see there is not a word in that article about permanent salary increases. The only thing

that comes close to what happened in this case is a discussion of bonuses. All of you have worked in your life, if you don't know what a bonus is, it's too late for me to explain it.

If you got it in the beginning and made the contributions, I guess you keep getting it.

Do you think you keep getting it if you didn't make contributions?

Additional proof is receipt of raises, portion of which is asked to be contributed. It is provided by the testimony of Mr. McInerny, who before he joined the National Security Bank was an examiner like Mr. Langdon. He accepted that salary raise and joined this club voluntarily.

Would he have joined this club if he thought it was illegal? Hardly.

Even Mr. DeGennaro, who is no longer making $85 off my client, and is certainly no friend of my client, admitted there is nothing wrong with officers spending their own money to make contributions. He conceded that highly paid officers could be expected to contribute.

How does one become a highly paid officer? He gets salary increases. Even Mr. Langdon is not

interested in the fact that employees got raises. That's not illegal. All he was interested in is whether employees were being reimbursed, being paid back by the bank for contributions they already made.

I concede if there was reimbursement that would have been wrong, but there isn't any. There is no testimony to that at all. Reimbursement is an indirect contribution.

Here the officers had a choice as the evidence clearly established. It's used for the contribution and if he chose not to keep it.

Let me give you the proof on Langdon. The subject of salary raises was not raised. Mr. Katzberg got Langdon to testify.

MR. KATZBERG: Objection.

THE COURT: I will sustain the objection.

MR. BANNIGAN: Direct examination, Mr. Katzberg, testified the subject of salary increases was increased, and on cross examination, after reviewing his report, which he prepared three days, he conceded only the subject of reimbursement was discussed. Only reimbursement was talked about, because that is wrong.

Salary increases for employees of the bank were only the hope of the bank that they would use

it for this purpose is illegal. He didn't say it because it's not. No crime was committed because it's proper for a bank or corporation to maintain a separate account into which officers contribute.

Even Mr. DeGennaro conceded that.

The Government must show the officers contribution was not voluntary. They have failed to meet this area just as miserably as all the other items.

In order to prove it's involuntary, they must show the contributions were secured by physical force --

MR. KATZBERG: I object.

THE COURT: That's the Court's charge.

MR. BANNIGAN: They must show coercion.

THE COURT: You can say has the Government proven-- If you say they must show, that's what the Court must decide how to apply it to the jury.

I'm past arguing with you.

MR. BANNIGAN: I'm not arguing.

You never heard a single witness testify he was threatened. You heard the overwhelming number of witnesses testify that their participation was voluntary and they agreed to do this because it was

good for the bank. More than one-half of the witnesses who testified so testified, and only four witnesses felt they didn't have a choice. Even those four said they were given an option and no one threatened them or coerced them.

Let me summarize the witnesses who testified it was voluntary.

Jack Fretz, Charles Nickerson, Harry Stahl, Al Fach, Bob Burke, voluntary; Jack McInerney, strictly voluntary. John Coulson, voluntary. Anthony Sisti, said how it was voluntary. George Barry, Roger Lew, Steve Korriss, voluntary. John Hackett.

Now, ladies and gentlemen, the Government must prove their case beyond a reasonable doubt before you can brand the defendants as felons. The Government's failure on this issue of voluntariness gives you more reason to doubt whether they have met that burden.

The defendants have no burden to prove anything. If anybody proved anything, the defendants did and not the Government. These men acting under advice of counsel, to make sure this program was voluntary. Those who refused to contribute never got hurt.

Mike Hafer refused. His career flourished and he is still manager of the Huntington Branch.

Tony Sisti, what happened after he refused? He got a $5,000 raise and promoted.

John Singleton, his career flourished.

Martin Travers, did he get fired? No. Remained president of the bank. Got a $10,000 raise. Mr. Travers went to all the dinners and didn't pay for one. The Government tells you the directors' program was a voluntary one.

MR. KATZBERG: Objection. It is the jury's recollection that controls.

MR. BANNIGAN: Mr. Brown testified the directors didn't like to contribute, yet they all did, and he told you it was voluntary because it was good for the bank. The officers' program was even more voluntary, yet the Government, without any evidence, would like you to believe otherwise.

I had a lot of other matters.

THE COURT: Go ahead. You have time yet, Mr. Bannigan.

MR. BANNIGAN: How long do I have.

THE COURT: About another fifteen minutes.

MR. BANNIGAN: I have to leave some things out--

THE CCURT: Do what you think is necessary. If I feel you're covering matters I will extend your time for you.

MR. BANNIGAN: Even matters I discussed with you are defenses. Has the evidence presented by the prosecutor disputed these? Has he proved these did not become their own funds?

Not one witness testified that way. The evidence shows the officers had the right to stop using this money to make political contributions and yet continued to receive the salary raises. It was their money. The bank could only hope once they gave it to them they would use it for contributions.

Has Mr. Katzberg proven a single officer was coerced into joining this club? No.

Has the Government proven that any officer who didn't contribute was hurt by the bank? No.

Were they ever penalized or had their salaries taken away if they didn't contribute? Again the answer is no.

There is an additional defense, but before that, Mr. Katzberg's contention that this was a clandestine secret operation and these defendants sought to destroy records -- this is a smoke screen

argument, designed to divert your attention to the weakness of the prosecution's evidence on the charges in this indictment. It is put in only to prejudice you against the defendants, so you would disregard the evidence in this case and convict these defendants for something that never happened.

Mr. Katzberg brings these allegations into this courtroom through the mouths of two persons who admitted lying on two occasions, didn't tell the truth, Mr. Brogan and Mr. Casey. He brings these foul and unsupported charges into this case because he knows from the evidence that no one in this courtroom would believe George DeGennaro and he said he denied giving the advice to the defendants.

He knows if you reject Mr. DeGennaro's testimony in accordance with the Judge's instructions, Mr. Katzberg's case is gone. Because Katzberg knows this he seeks to poison your mind with false testimony about alleged concealment and plan to destroy documents, neither of which ever happened.

The proof there was no concealment is overwhelming. First there were forty people in this club. How can you have a secret when over forty people plus secretaries plus, as Roger Lew testified,

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he said some customers knew about it.

How can anything be secret when you publish a bulletin which Mr. Naver showed you, which tells everybody in the bank what you are going to do? How can anything be secret which you maintain the meticulous records kept in this case which are before you on that card and in evidence? How can there be any concealment when all these defendants fully answered Langdon's questions and showed the records of the club and told him to contact the Shea firm if there were any other questions?

The proof of all this is Mr. Langdon's report, which is in evidence, and you can read it. That report outlines everything about the program which Mr. Langdon at that time thought was sufficiently important to inquire on it.

There was no concealment and the Government knows it. There is no evidence to destroy any document. If there were any destruction of documents, how did Mr. Katzberg come into possession of the mountain of material put to you?

MR. PATTISON: We object.

THE COURT: I will sustain it. That's not a fair question.

MR. BANNIGAN: He's got the records. Ask him how, to explain to you how he can make that argument when the records are sitting on that table.

During the entire trial we have had all evidence submitted before the jury on both sides. The evidence is uncontradicted that when this investigation started or sometime after Mr. Powell, at Mr. Christ's direction, invited FBI agents to come to the bank and look at the records.

There were 70,000 items that even the FBI didn't want them.

Now, Mr. Katzberg claims these defendants tried to destroy documents. Those are the facts and as hard as Mr. Katzberg may wish they were otherwise, they are not. He can't change them.

If there is any evidence in this case about concealment, it is the fact the defendants had to bring out to assist you in assessing the credibility of the star witnesses of the Government that the Government had promised them these.

The defendants had to bring to your attention that Mr. Brogan falsely denied to the FBI that he knew anything about the contribution program. It was the defendants who brought to your attention,

not the Government that Mr. Casey's involvement in this contribution program was never brought to the Bar Association. It was the defendants who brought to your attention that Mr. Casey was not named in the indictment as an unindicted co-conspirator, so when he ran for re-election he could continue to deceive the voters.

When Mr. Langdon testified on direct that the subject matter of salary raises was not discussed, did the Government probe his recollection five years ago to make sure it was accurate?

No. The defendants did that. Mr. Langdon said the subject wasn't discussed only reimbursement. That never happened in this case.

When you are told there was a plan to conceal anything, make sure who got the relevant evidence and who didn't.

There is one brief matter, if I may, in six or seven minutes.

THE COURT: Try to make it in five.

MR. BANNIGAN: I'll try. It is difficult for me to contain myself on this subject which I as an attorney find embarrassing, and that is the subject of Mr. DeGennaro. My colleagues devoted enough time

to this subject. I'll point out to you that this case in a real sense turns upon your assessment and your acceptance or rejection of that man's testimony.

If you reject that testimony under the instructions you will receive from the -- instructions of Judge Costantino, there is little further for you to do than to return to this courtroom and let all these people go home.

On the other hand, if all of you believe Mr. DeGennaro, before you return a verdict you must consider all the other things I mentioned this afternoon. So a crucial question before you is, Did Mr. DeGennaro tell the truth? It would be proper and legal to increase the officers' salary to make contributions.

At this late hour everyone has an opinion on that subject, even you. The defendants called Mr. DeGennaro because they wanted you to see and hear all the relevant evidence of this case. They called him because they had faith in the jury system and because they knew if you saw him on the stand and heard his testimony you would reject it.

They knew that because a fair and impartial

review of all the evidence when stacked against Mr. DeGennaro's testimony shows he was not a believable witness. The best evidence that Mr. DeGennaro was untruthful when he denied approving the contribution plan is the plan itself, and how it worked.

If you step back and look at this plan from an objective standpoint you will see it has got "lawyer" written all over it, and the conclusive proof of that is that is that when officers stopped contributing they continued receiving the full salaries.

(Continued on the next page.)

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Ladies and gentlemen, if you -- and some of you may -- if you were employers and you asked an employee to do something for you, and you told him that you would increase his salary to make him able to do that, would you continue to give him the money if he didn't do what you asked him to do?

Of course you wouldn't. No employer would unless his lawyer told him he had to. No employer in his right mind would continue to pay this money unless his lawyer had told him that once the raise was given, it had to be permanent and could not be taken away.

And that, of course, ladies and gentlemen, is exactly what happened in this case. And it's exactly what Mr. Dowd testified, that DeGenaro told him he had to do. And he told him that, ladies and gentlemen, because the money had to become the officers', not the bank's, in order for the program to be proper.

Ladies and gentlemen, these defendants are not lawyers. Certainly my client is not a lawyer. It's not even human.

Of course, ladies and gentlemen, none of you are lawyers. Do you really believe that these defendants

or any of you in their position in 1967 would ever have thought of this fine, technical, but I submit proper distinction between what is the bank's money and what is the officers' money.

The answer is, no. Only a skilled attorney would recognize this distinction.

And that is the proof, I submit, that DeGenaro approved this program in 1967, and the proof that when he denied that on the witness stand he was untruthful.

Now, why is this plan -- it is not a simple plan. It was fairly complex, according to Mr. Katzberg. He went through 10, 15 minutes explaining it.

Why is this plan complicated? Is it complicated because, as Mr. Katzberg contends, it was some sort of a scheme to violate the law? Or is it complicated, ladies and gentlemen, because the lawyers said it had to be because this is the only way we can avoid violating the law.

I suggest to you, ladies and gentlemen, that it's the latter.

And there is further proof that he told the bank he could give raises to the contributors. You will recall Roger Lew testified that in 1967 he was

present in Clifford's office when Dowd came in and told Mr. Clifford, "I have spoken to DeGenaro," and Lew said that he reported to Clifford that the -- this is from page 3126 of the transcript:

"That Mr. DeGenaro had approved the political contributions plan, which plan was that the officers of the bank could make political contributions and the bank could give the officers salary increases because it was the banks right to pay our officers any salary they wanted to."

Certainly, Mr. Lew had no motive to invent this conversation, nor in 1967, even before the program went into effect.

Did Mr. Dowd have any reason to tell Mr. Clifford that DeGenaro had approved it if in fact he never had.

Mr. Corriss, Vice President of the bank now in Florida testified at the dinner he attended with Mr. DeGenaro and a partner of Mr. DeGenaro, one of those two gentlemen told him -- this is at page 257 it looks like. I can't even make it out myself. It looks like a 7 to me.

"The bank's contribution program was legal."

Ladies and gentlemen, no lawyer would ever say such a thing unless he had first-hand knowledge of

every aspect of the plan. And I suggest to you that the evidence in this case unequivocally shows that George DeGenaro knew of and approved every aspect of this plan.

There is additional evidence to support this, however, and that is the Wall Street Journal article which Mr. Powell sent to Mr. DeGenaro. This article, as you recall, mentions nothing about salary increases, mentions other methods of banks incorporations.

THE COURT: I think we are making a full circle.

MR. BANNIGAN: I just have about five pages to go.

THE COURT: You started somewhere around three-quarters of an hour ago.

All right.

MR. BANNIGAN: Thank you, your Honor.

The only thing that this article doesn't mention are permanent salary raises. Silence on that subject. And which is the only conceivable reason why Mr. Powell would have sent this to DeGenaro, to find out whether that which the bank was doing, but which was not mentioned in the article, was proper.

Mr. Katzberg can argue from now until Doomsday and I guarantee he can't give you any other plausible

reason why Mr. Powell would send that article to the lawyers.

Ladies and gentlemen, why would these people consult the lawyers any way if they plan on violating the law? You don't generally consult your lawyer before you violate the law, although most people do afterwards.

Now, all of these factors, I suggest, prove that DeGenaro was a consultant and approved this plan. And the only reason that he denied that is because he did not have the courage to admit perhaps -- only perhaps -- he made a mistake.

Mr. DeGenaro, you will recall, testified that he has made very few mistakes in his life. I suggest to you that he has made as many mistakes as you or I or anyone else in this courtroom made. The difference between Mr. DeGenaro and the rest of us, I hope, is that we have the courage to admit those mistakes. He certainly can't admit them, however, when it might jeopardize his license. And you will recall that he testified, "I am not going to lose my license for my client."

That statement says quite a bit about how Mr. DeGenaro viewed his client and the obligations of

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his client.

Now, Mr. Ryan mentioned Mr. DeGenaro on the stand, his manner of testifying. Was he nervous? Did he scream? Did he fight? Did he try to avoid answering the questions?

You saw him. You had an opportunity to weigh that.

Demeanor tells you a lot about a man. It tells you whether he has something to hide or whether he's being candid.

What did Mr. DeGenaro tell you?

My time is up, ladies and gentlemen. So, in closing, let me thank you again for your attention that you have shown throughout this trial. Let me also exact from you a promise that you will consider the arguments I have made and those made by my fellow counsel. And let me exact from you the further promise that under no circumstances would you compromise your views on the evidence and that you will only consider returning a guilty verdict in this case if you and each and every one of you are convinced beyond a reasonable doubt that the Government has established its case.

I submit, if you do these things, ladies and

gentlemen, you will find that the indictment has not been proven beyond a reasonable doubt or beyond the standards required.

And, finally, it is not my function, ladies and gentlemen, to tell you how to conduct your deliberations. I would never assume to do so. I suggest to you, however, that if you first consider DeGenaro's testimony and you reject the testimony, in accordance with the instructions that his Honor will give you, you can return to this courtroom in a very short period of time with the verdict that the lack of evidence in this case cries out for, and that is a not guilty verdict as to the bank and as to the other defendants in this case.

Thank you for your time.

THE COURT: All right, thank you.

All right. I think we will take a five-minute recess and then we will have what we call rebuttal. You can take your recess. I have something to talk about with the lawyers.

(Whereupon, the jury retired from the courtroom.)

MR. KORMAN: Your Honor, I would like to object to two things that Mr. -- two objections as to Mr. Bannigan's comments. First, he led the jury to

FL:SR
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Charge

A 2801

THE COURT: All right Mr. Foreman, ladies and gentlemen of the Jury, this is the final stage of the proceeding and the Court now will charge you on the law.

Now, you have heard the evidence and the arguments it becomes my duty to give you the instructions of the Court as to the law applicable to the case.

It is your duty as Jurors to follow the law as stated in the instructions of the Court and the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court regardless of any opinion you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court. Just as it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always

depend upon the willingness of each individual juror to seek the truth as to the facts with the same evidence presented to all the jurors and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and a denial made by the not guilty plea of the accused.

You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice or bias. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

The attorneys both for the Government and the Defendants have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence.

However, the law does permit

you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case, you may use those arguments in your deliberations and in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in th case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

As I have already instructed you, the Court will be the judge of the law. You may recall that some motions were argued at side bar or that you were asked to leave the courtroom from time to time.

That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself, and should not have come before you.

In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion. in this case.

I have not indicated to you in any way whatsoever what my feeling is with reference to the facts in the case, or with refrence to the guilt or innocence of the defendants.

(Continued on the next page.)

That is your province and your job. You should not try to weigh what you believe the Court's impression may be.

You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the party they represent, and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case.

During my pre-charge, I told you among other things that the questions asked by the attorneys are never to be considered as evidence even though the question may contain a statement of evidence. You are reminded that only the answer to the question is evidence, if, of course, the question was answered.

Of course, you know by now that this case has come before you by way of indictment presented by a grand jury sitting in the Eastern District. Remember, an indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything.

I will now read to you the first ten counts of the indictment and leave the balance to a subsequent time.

A 2806

United States District Court, Eastern District of New York.

United States of American against Patrick J. Clifford, David J. Dowd, Frank P. Powell and the Security National Bank, defendants.

The grand jury charges:

Introduction.

(1). The defendant Security National Bank was at all times material hereto a national bank organized and charted pursuant to Title 12, United States Code, Section 21, etc. It was, therefore, prohibited by Title 18, United States Code, Section 610, from making "a contribution or expenditure in connection with any election to any political office, or in connection with any primary action or political convention or caucus held to select candidates for any political office ..."

(2). Defendant Patrick J. Clifford was at all times material hereto President or Chairman of the Board of Directors of the Security National Bank and acted in those capacities.

(3). The defendant David J. Dowd was from February 1966 through September 1972 Senior Vice President of the Security National Bank and acted in

that capacity.

(4). The defendant Frank B. Powell was from May 1965 to April 1971 Executive Vice President of the Security National Bank; Vice Chairman of the Board of Directors from April 1971 to April 1972; a member of the Board of Directors from approximately April 1971 to April 1973; and a consultant to the Board of Directors from approximately May 1973 through December 1974, and acted in those capacities.

(5). Joseph Stefan was, from April 1972 through December 1974, Executive Vice President of the Senior National Bank, and acted in that capacity.

(6). Douglas Wulffleff was, from July 1970 to March 1973, Senior Vice President of Security National Bank, and acted in that capacity.

Count 1:

(1). From in or about February 1966 and continuously thereafter up to and including December 1974, within the Eastern District of New York, Patrick J. Clifford, David J. Dowd, and Frank B. Powell, defendants, together with Joseph Stefan and Douglas Wulffleff, each named within as a co-conspirator, but not as a defendant, and others known and unknown to the grand jury, did knowingly

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willfully, and unlawfully combine, conspire, confederate and agree to cause the Security National Bank (hereinafter "the bank") to make contributions and expenditures in connection with various federal, state and local campaigns and elections including, but limited to, those campaigns and elections set forth in Counts 2-10 of this indictment, said contributions and expenditures totalling in excess of two-hundred thousand dollars, and did willfully conspire and agree to consent to the making of such illegal contributions by the Security National Bank, in violation of Title 18, United States Code, Section 610.

2. It was part of such conspiracy that Patrick J. Clifford, David J. Dowd and Frank B. Powell, defendants, together with Joseph Stefan, and others known and unknown to the grand jury, would select, cause to be selected or approved the selection of various officers at the Security National Bank to make political contributions of one-hundred dollars a month, and would approve or cause to be approve salary increases to reimburse and compensate said officers for the said contributions, as well as any tax liability on the salary increases.

3. It was further a part of said conspiracy that Patrick J. Clifford, David J. Dowd and Frank B. Powell, the defendants, together with Joseph Stefan and Douglas Wulffleff, or other persons acting at the defendants' direction, would inform bank officers of their selection and contributors and the salary increases to reimburse them for the contributions which they were told they were to make on behalf of the Security National Bank.

4. It was further a part of said conspiracy that Patrick J. Clifford, David J. Dowd and Frank B. Powell, the defendants, together with Joseph Stefan, and others known and unknown to the grand jury, would select, cause to be selected or approve selection of political candidates or organizations as recipients of these political contributions, and would determine the amount of money to be contributed to each political candidate, campaign or political organizations selected.

5. It was further a part of said conspiracy that Patrick J. Clifford, David J. Dowd and Frank B. Powell, the defendants, together with Joseph Stefan, would conceal the existence of the said conspiracy and would take steps designed to prevent

disclosure of their activities.

In furtherance of the said conspiracy and to effect the objects and purposes thereof, the following overt acts, among others, were committed in the Eastern District of New York.

Overt acts.

1. Sometime after he became President of the Security National Bank, in February 1966, Patrick J. Clifford, the defendant, told various bank officials that he was initiating a new method by which the bank would make political contributions.

2. In or about October 1967, Frank B. Powell, the defendant, instructed his secretary, Betty Jaeger, to keep records of a group of bank officers who would be making political contributions of one-hundred dollars per month.

3. In or about November 1967, David J. Dowd, the defendant, told George Hart, a bank officer, that Hart had been selected to join a group of bank officers making political contributions; that Hart was to contribute one hundred dollars per month and would receive a salary increase of seventeen hundred dollars to reimburse him for the cost of the contributions, including taxes on the said increase.

4. In or about December 1967, Patrick J. Clifford, the defendant, told James Brogan, a bank officer, that Brogan had been selected to participate in a program whereby bank officers were making political contributions of one hundred dollars per month; that Brogan would be compensated for these contributions by a seventeen-hundred dollars salary increase, twelve-hundred dollars for the contributions and five hundred dollars for any tax liability on the said increase.

5. In or about December 1967, Frank B. Powell, the defendant, told Jack Fretz, a bank officer, that he had been selected to make political contributions of one hundred dollars a month on behalf of the bank; that he would be reimbursed for these contributions by a seventeen-hundred dollar salary increase, which would cover the cost to Fretz of the contributions, including taxes on said increase.

6. In or about December 1968, David J. Dowd, the defendant, told George Brooks, a bank officer, that Brooks had been selected to join a group of bank officers making political contributions; that Brooks was to contribute one hundred dollars per month and would receive a salary

increase of seventeen hundred dollars to reimburse Brooks for the cost of the contributions, including taxes on the said increase.

7. In or about December 1970, Frank B. Powell, the defendant, told Robert Doud, a bank officer, that he would be getting forty-two hundred dollars' salary increase, twenty-five hundred dollars of which was a merit raise, seventeen-hundred dollars of which was to reimburse Doud for the political contributions he was to make on behalf of the bank.

8. In or about December 1970, David J. Dowd, told Thomas Casey, a bank officer, that he was going to receive a salary increase of five thousand dollars, three thousand dollars of which was a merit increase, two thousand dollars of which was to reimburse him for the political contributions he was to make on behalf of the bank.

9. In or about December 1970, Douglas Wulffleff, named herein as a co-conspirator, but not as a defendant, told Carmine Merolla, a bank officer, that he was going to receive a five thousand dollar salary increase, two thousand dollars of which was to reimburse Merolla for contributions of one hundred dollars a month he was to make on behalf of the bank.

10. In or about February 1971, Patrick J. Clifford, the defendant, authorized the hiring of Albert Fach at a salary of $35,000, two-thousand dollars of which was to reimburse Fach for political contributions he was to make on behalf of the bank.

11. In or about February 1971, Patrick J. Clifford, the defendant, in a meeting with Edwin Langdon, the comptroller of the Currency's Office, in the presence of David J. Dowd and Frank B. Powell, defendants, told Mr. Langdon, among other things, that while employees of the bank were making political contributions, they were made from each officer's own funds on a voluntary basis, and no one was being reimburse or compensated by the bank for such contributions.

12. In or about October 1972, Patrick J. Clifford, defendant, directed by bank officers making political contributions, reimbursed the bank for three Security National Bank expense checks in the sum of twenty-five hundred dollars, twenty-five hundred dollars, and one thousand dollars, which were drawn in or about October 1972 and paid to subdivisions of the Nassau County Republican Committee.

13. The allegations contained in Counts 2-10 of this indictment are incorporated herein as overt acts;

which means that each one of the subsequent counts, that are going to be read, two through ten, you may consider the overt acts as being read once again as each of these counts that I will read to you. It becomes a part of it.

Count 2. In or about October 1972, within the Eastern District of New York, the defendant Security National Bank did unlawfully make, and the defendants Patrick J. Clifford and Frank B. Powell did knowingly and willfully consent to and cause the Security National Bank to make a contribution and expenditure in connection with the 1972 election of President of the United States to whit: a contribution to the Nixon rally, in violation of Title 18, United States Code, Section 610. (Title 18, United States Code, Section 610 and 2.)

Count 3. In or about January 1973, within the Eastern District of New York, the defendant Security National Bank did unlawfully make and the defendants Patrick J. Clifford and Frank B. Powell did knowingly and willfully consent to and cause the Security National Bank to make a contribution and expenditure in connection withthe 1972 of Representatives to the United States Congress, to whit: a contribution to the Roncarlo for Congress Committee, in violation of

Title 18, United States Code, Section 610. (Title 18, United States Code, Section 610 and 2.)

I may say at this time that each one of you is going to receive a copy of this indictment or take it into the jury room with you, realizing full well it would be almost impossible to remember the language that is being used.

All right. I want you to listen, in any event, very attentively, as I read it.

(Continued next page)

Count Four. In or about April, 1974, within the Eastern District of New York, the defendant Franklin National Bank did unlawfully make, and the defendant Patrick J. Clifford did knowingly and willfully consent to and cause Security National Bank to make, a contribution and expenditure in connection with the 1974 election of Representatives to the United States Congress, to wit: a contribution to the Wydler for Congress Committee, in violation of Title 18, United States Code, Section 610. (Title 18, U.S. Code, Sections 610 and 2.)

Five. In or about and between September and December, 1972, within the Eastern District of New York, the defendant Security National Bank did unlawfully make, and the defendants Patrick J. Clifford and Frank D. Powell did knowingly and willfully consent to cause the Security National Bank to make contributions and expenditures to the Suffolk County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972, in violation of Title 18, United States Code, Section 610. (Title 18 U.S. Code, Sections 610 and 2.)

And may I say that each one of these counts has the same section involved. So I will not read them

any longer.

Count Six. In or about and between March, 1973 and October, 1974, within the Eastern District of New York, the defendant Security National Bank did unlawfully make, and the defendant Patrick J. Clifford did knowingly and willfully consent to and cause the Security National Bank to make contributions and expenditures to the Suffolk County Committee, to be used directly or indirectly in connection with various state and local elections in 1972 and 1974, in violation of Sections earlier before mentioned.

Count Seven. In or about and between May, 1973 and July, 1974, within the Eastern District of New York, the defendant Security National Bank did unlawfully make, and the defendant Patrick J. Clifford did knowingly and willfully consent to and cause the Security National Bank to make contributions and expenditures to the Nassau County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972 and 1974, in violation of the sections earlier before mentioned.

Count Eight. In or about and between February and March, 1974, within the Eastern District of New York, the defendant Security National Bank did

unlawfully make, and the defendant Patrick J. Clifford did knowingly and willfully consent to and cause the Security National Bank to make contributions and expenditures in connection with the 1973 New York City Mayoralty Election, to wit, contributions to the Beame Birthday Committee, in violation of the sections heretofore mentioned.

Count Nine. On or about September 9, 1972, within the Eastern District of New York, defendant Security National Bank did unlawfully make, and the defendants Patrick J. Clifford, David J. Dowd and Frank B. Powell, did knowingly and willfully consent to cause the Security National Bank to make a contribution and expenditure in connection with the 1972 election of judges to the New York State Board of Appeals, to wit: a contribution to the Committee to Elect Bernard Meyer, in violation of Title 18 heretofore read to you.

And Count Ten. In or about and between August and September, 1972, within the Eastern District of New York, the defendant Security National Bank did unlawfully make, and the defendants Patrick J. Clifford, David J. Dowd and Frank B. Powell did knowingly and willfully consent to and cause the

Security National Bank to make a contribution and expenditure in connection with the 1972 election of judges to the New York State Court of Appeals, to wit: a contribution to the Committee for the Election of Saul Wachtler, in violation of the sections of law heretofore read to you.

I will now go to the charge.

The indictment, as I have indicated, is merely an accusation and not evidence of the defendants' guilt, as contained in the first ten counts, and which I will read subsequently -- the last three counts.

More specifically, the indictment charges in count (1) a conspiracy to violate Section 610 of Title 18, United States Code; in Counts 2 through 10 substantive violations of Section 610 are charged; in Count 11, a conspiracy to violate Section 656, Title 18, United States Code is charged, and in Counts 12 and 13 charges of substantive violations of Section 1001 of Title 18, United States Code, are set forth.

And I know you will realize I will give you these sections and read the statute to you as they apply to the counts that I will read, or that I have

read already.

You should note that all of the persons on trial are not named as defendants in all of the counts in the Indictment.

And at this juncture the Court will advise you that it will give you a photostatic sheet showing the names of the defendants and also the counts in which they are named. And you will be readily able from this photostatic sheet to determine who was named in which count. And also this will be used at the end of your deliberations or during your poll-taking by you, Mr. Foreman, to indicate what your vote is. So you will have sufficient copies in your jury room to use this photostatic paper.

All right. And then that will be used ultimately to address the Court as to what your final determination will be or is in reference to each and every defendant that has been charged in this trial.

I tell you that now because I want you to know that I try to simplify the duties of coming -- at least to assessing the matter that you have before you. Otherwise, it would be a rather complicated and confused state of affairs, to say the least.

Now, for example -- I will start over again

on this page.

You should know that all of the persons on trial are not named as defendants in all of the counts in the indictment. For example, Security National Bank is not named as a defendant in either Count 1 -- and I will read it later -- or Count 11. Similarly, the Bank, Mr. Dowd and Mr. Powell are not named as defendants in Counts 12 and 13, which I will read subsequently -- the alleged false statement counts.

A copy of this indictment will be given to you to assist you in your deliberations.

Since all of the defendants are not named in all of the counts, it is appropriate for me to emphasize that guilt is personal and therefore in determining the guilt or innocence of a given defendant on each count in which the defendant is named, you may consider only the evidence or lack of evidence relating to a defendant in a specific count under consideration, and not the evidence or lack of evidence relating to other defendants and other counts.

Of course, to convict any defendant on any count inwhich he is named, the evidence must be such as to satisfy you of the defendant's guilt beyond a reasonable doubt.

To fully understand Count 1, which charges a conspiracy to violate Section 610, it is necessary to comprehend the type of conduct which the section both prohibits and permits. The easiest way to explain the section is in the context of Counts 2 through 10, which charge substantive or actual violations of Section 610. To that end, I will first read to you those portions of Section 610 and related statutes which are applicable to the charges contained in Counts 2 through 10; together with the essential elements of these statutes. The Government must prove each essential element to your satisfaction beyond a reasonable doubt before you may convict any defendant on any of the charges contained in Counts 2 through 10. Counts 2 through 10 charge individual defendants with knowingly and willfully consenting to and causing the Security National Bank to make the illegal political contributions specified in those counts.

Those counts also charge that the Security National Bank itself made the specified contributions in violation of the law.

Before you consider the possible guilt of the defendants on Counts 2 through 10, you must first

determine in accordance with instructionsI shall give you, whether or not the bank itself made the contribution charged in each count.

If you are convinced beyond a reasonable doubt that the bank did make the contributions charged in each count, then you may then consider whether the defendants knowingly and willfully caused or consented to that contribution. However, if you are not convinced that the bank itself made the contributions charged in any of the counts, then you must also find the individual defendants not guilty as to those counts.

In pertinent part, Section 610 provides as follows:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution...in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office..."

"As used in this section, the phrase contribution...shall include any direct or indirect payment, distribution, loan, advance, deposit or gifts of

money, or any services, or anything of value (except a loan of money by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices referred to in this section; but shall not include...the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation: provided, that it shall be unlawful for such a fund to make a contribution by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of employment..."

What I shall say to you now applies to the individual defendants who are charged in Counts 2 through 10 of the indictment. Later I will discuss the charges against the Security National Bank itself, contained in Counts 2 through 10.

In order for you to find the individual defendant or defendants named in each of Counts 2 through

10, guilty of the acts charged in those counts, the Government must prove to you beyond a reasonable doubt, as to each defendant named in each of the counts, the following five elements:

First. That the Security National Bank was a national bank. I believe that has been conceded. As to this element, all the parties have stipulated and agreed that the Security National Bank was a national bank; therefore, this element is not disputed.

Second, That the contribution charged in the specific count was actually made with bank funds.

Third. That the contribution charged was made with bank funds in connection with an election.

Fourth. That the defendant or defendants named in the specific count caused or consented to its making.

Fifth. That the defendants acted knowingly and willfully, as I will define those terms.

I have already told you that the first element to be proved in connection with Counts 2 through 10 is not in dispute.

The second element is that the contribution charged in each charge was actually made with bank

funds. A contribution includes both direct and indirect payments. As to Counts 3 through 9, for instance, the Government alleges that the bank made the contributions indirectly by giving certain of its officers salary increases which would then be used to make contributions on behalf of the bank. The defendants claim that these were salary increases and not funds caused by the bank to be given as political contributions in violation of the statute.

In Counts 2 through 10, the Government alleges that the contributions were made directly by bank check.

2 and 10. I am sorry. Counts 2 and 10.

The statute, 18 U.S. Code Section 610, permits a bank to maintain and administer, and solicit contributions to, a separate segregated fund to be utilized for political purposes. Such contributions must be the personal funds of the contributors, and not the funds of the bank. If the funds are the personal funds of the contributors and not bank funds, they may not be solicited by coercion, under threat of financial reprisal, or job discrimination, but must be voluntarily given. And this is the only area in which the concept of voluntariness may be considered

by you with respect to the elements of the offense.

In addition, voluntariness refers only to the method by which the monies are solicited for the segregated fund, and not to the method by which it was determined now the monies raised will be spent from the fund.

5/2 If you find beyond a reasonable doubt that the monies expended here were in fact indirect contributions of bank funds and that the officers were merely conduits for the bank's money, whether the officers participated voluntarily or not is immaterial.

However, if you are not convinced beyond a reasonable doubt that the monies were indirect contributions and that the officers were merely conduits of the bank's money, then you must consider whether or not the funds for political contributions were solicited by coercion, or under threat of financial reprisal or job discrimination.

If you are not convinced beyond a reasonable doubt as to any or all of counts 2 through 10 that they were so solicited, then you must acquit the defendants as to those counts of which you are not convinced beyond a reasonable doubt.

The third element is that the contribution charged

was made in connection with an election.

Contributions need not be money, but anything of value.

If you find beyond a reasonable doubt that the bank either directly or indirectly made the contributions charged in any or all of Counts 2 through 10 in the indictment, out of its own funds, then you must decide whether that contribution was made in connection with an election.

In order for a contribution to be made in connection with an election, it must be made for the purpose of influencing an election.

Now, in this regard you should be careful to distinguish between motive and intent.

Motive is what prompts a person to act, or fail to act. Intent refers only to the state of mind with which the act is done. For instance, personal advancement and financial gain are two well-recognized motives for much of human conduct. These laudable motives may prompt one person to voluntary acts of good, another to voluntary acts of crime.

Good motive alone is never a defense where the act done is a crime. So, the motive of the accused is immaterial except insofar as evidence

of motive may aid determination of state of mind or intent.

You have heard evidence indication that the principal purpose of making the contributions here alleged was to ultimately aid the bank's business. But regardless of the motive to help the bank, if the contribution was made to a political committee with the knowledge that it was going to be used in an election campaign, then that contribution was made with the requisite intent to influence the particular election. And this is so even if the principal purpose of making the contribution was to help the bank, not to influence the election. Post-election contributions can be made in connection with an election. To find such a contribution you must find either by direct or circumstantial evidence or by inference that there was an agreement or understanding prior to the election to do so, and that is after considering all the facts in evidence in the case.

An act is done "knowingly" if done voluntarily and intentionally, not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act

done because of mistake, or accident, or other innocent reason.

An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with that purpose either to disobey or to disregard the law.

Since intent and purpose are states of mind and it is not possible to look into a man's mind to see what went on in it, the only way you have of arriving at the intent and purpose of a defendant in this case is for you to take into consideration all the facts and circumstances shown by the evidence, including what a defendant is alleged to have said, or how he is alleged to have acted.

The evidence also includes the exhibits and documents. You must determine from all such facts and circumstances what the intent of the defendant was at the time in question. Thus, direct proof of willfulness or willful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inferences that may arise from a combination of acts, although each act standing by itself may seem unimportant.

In connection with the question of willfulness, the defendants have raised the defense of advice of counsel.

We are going to take a short recess right after this.

In connection with the question of willfulness, the defendants have raised the defense of advice of counsel.

Now, if an individual having at his command all the relevant facts before taking any action places all the relevant facts before a competent attorney whom he believes to act in good faith and asks that attorney his opinion, and that attorney having considered all the relevant facts, and speaking in advance of any action taken, indicates that the conduct is lawful, under such circumstances you cannot find that the client has knowingly, intentionally violated the law, if he acts strictly in accordance with the advice of expert counsel, chosen in a disinterested and honest way, and acting, so far as the client knows, in a disinterested and honest way, even if it should later turn out that the advice was incorrect.

Now, it may happen that the client consults

his lawyer midway in the course of his action. If he consults him midway, anything which is done pursuant to the advice of counsel after the consultation also is conduct as to which one cannot say that the client has acted in a fraudulent or dishonest or knowingly or intentionally unlawful way. But, of course, everything depends on whether there has been placed before the lawyer everything which is relevant and whether the lawyer has been selected in an honest and disinterested way and whether, so far as the client knows, the lawyer has acted in an honest and disinterested way

And in this case you, the jury, are entitled to take into account in connection with the defendants the extent to which they did or did not set forth the relevant material facts before a lawyer in advance of some or all of their conduct, and the extent to which they made a selection with integrity, and the extent to which they had a right to assume that the lawyer was acting with integrity, and whether or not they acted in strict accordance with the advice of counsel.

Now, I think at this time I will take a ten-minute recess and then I will give you the balance

of the charge.

(Whereupon, the jury retired from the courtroom.)

(Recess taken.)

(Whereupon, the jury entered the courtroom.)

THE COURT: I might advise you that after the charge you will be taken out to supper, and the alternates would have a right to go to supper with you. And the after you finish having your supper, the alternates will be released.

I want to find out where you live, ma'am.

ALTERNATE JUROR NO. 1: Bayside.

THE COURT: Is it difficult for you to get out there?

ALTERNATE JUROR NO. 1: No.

THE COURT: And you?

ALTERNATE JUROR NO. 2: West Islip.

THE COURT: Will the trains be running to go out there?

ALTERNATE JUROR NO. 2: I guess so.

A JUROR: He is the one we had the trouble with.

THE COURT: All right. And you have no problem. You live in the neighborhood somewhere?

ALTERNATE JUROR NO. 3: Brooklyn.

THE COURT: You do have a choice to go to supper or not go. But I don't think you should pass it up after ten weeks. I am even going to allow you to have a drink.

All right, we can go back to the right type of mood. Let's get back to our serious frame of mind.

Counts 2 through 10 also charge each of the defendants specifically named in those counts as having aided and abetted the offense charged in the specific count, in violation of Section 2 of Title 18, United States Code. That section reads as follows:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

T hat means whatever they have done, all are the same. There is no agency involved.

All right.

In order to aid and abet another to commit a

crime, it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seeks by some act of his to make the criminal venture succeed.

An act is "willfully" done if dones voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with that purpose either to disobey or to disregard the law.

Mere knowledge that a crime is being committed is not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

You, of course, may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the defendant participated in its commission.

Therefore, if you find that a violation of law occurred in Counts 2 through 10 and you are convinced

beyond a reasonable doubt that one or more of the defendants named in the indictment aided and abetted the commission of the violation alleged in that count you may find him guilty of that count as though he were a principal.

There is, furthermore, another method by which you should evaluate the possible guilt on the substantive counts even if the Government's proof was not sufficient to establish all the required elements as to a particular defendant. I shall shortly instruct you as to the crime of conspiracy for which the defendants here are charged in Count 1. Now, if you find pursuant to those instructions that a particular defendant was a conspirator and hence guilty under the first count, you may find him guilty as well under a substantive count in the indictment, provided you find as to such substantive count the following:

(1) That the crime charged in the substantive count was committed;

(2) That it was committed during and in furtherance of the conspiracy charged in Count 1; and

(3) T he particular defendant was a member of the conspiracy at the time the substantive act

was committed. If you find this to be a fact, then each and every member of the conspiracy, just like a partner, is criminally responsible for the substantive crime and may be found guilty thereof. The reason for this is that a co-conspirator committing a substantive crime would in that case be an agent of the other members of the conspiracy. Thus, a party to a continuing conspiracy is responsible for an offense committed by a co-conspirator in furtherance of the conspiracy even if that party does not participate in the substantive offense or even if he had no actual knowledge of it.

(Continued on next page.)

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THE COURT (Continuing): I will now discuss counts 2 through 10 as they apply to the Security National Bank itself. Those counts charge that the Security National Bank made contributions or expenditures in connection with specified elections to political offices in violation of Section 610. It has been stipulated and agreed by all the parties that the Security National Bank was a national bank during the years in question.

A corporation is a legal entity, but like an individual, may be found guilty of a criminal offense. Since a corporation is merely a legal entity, it may act only through natural persons who are known as its agents, and is responsible for the actions of the officers and employees who are acting within the area of responsibility entrusted to them. In order for a legal entity to be responsible for the acts or statements of its officers or employees, it is not necessary for that entity to have specifically authorized the officer or employee to commit the act or make the statement. The legal entity here, the bank, is legally bound by the acts and statements of its agents, if those acts are done or made within the scope of their express or apparent authority. Express authority is that authority specifically given to an agent

by his superior; apparent authority is that authority which outsiders would normally assume that the agent would have, judging from his position with the bank and the circumstances surrounding his past conduct. When the acts of an agent are performed within the scope of his express or apparent authority, the corporation is held legally responsible for such acts although they may have been performed contrary to the instructions of the corporation and although such acts may be unlawful.

In order to find the bank guilty, you must find that the essential elements of the offense, except for willfulness, as previously set out in these instructions, are present as to the bank, in the form of acts of agents of the corporation within their authority. The scope of authority of these agents is a question of fact for you to decide just as other fact questions in the case. You should not consider whether or not the bank's actions were willful or not willful. Thus, although the advice of counsel defense if believed by you, would be a defense to the charges against the individual defendants, advice of counsel is not a valid defense for the bank to claim.

Remember that the Government has the burden of proving each element of the offense beyond a reasonable

doubt. Remember also that as to each count you should consider the guilt or innocence of the bank before you consider the guilt or innocence of the individual defendants.

Having explained the essential elements of counts 2 through 10, we can now turn our attention to count 1, which as you know is a charge that the three individual defendants conspired to violate Section 610.

The conspiracy charge is entirely separate and distinct from the charge made in the substantive counts. This fact, however, does not prevent you from considering proof of actual violations as evidence that a conspiracy existed.

In order to find the defendants guilty of conspiracy as charged in the first count of the indictment, the Government must prove, to your satisfaction beyond a reasonable doubt, the following essential elements:

First: That some time between February, 1966 and December 1974 an agreement existed between any defendant and any other defendant or unindicted co-conspirator to make political contributions in violation of the law; and that this conspiracy continued until after September 5, 1972. I have already explained to you the

essential elements of a Section 610 violation.

Second: That it was part of this agreement that the defendants would consent to or cause to be made political contributions from the general funds of Security National Bank;

Third: That as to each of the defendants on trial, he knowingly and willfully associated himself with the conspiracy; and

Fourth: That one of the defendants or co-conspirators knowingly committed an overt act after September 5, 1972.

A conspiracy is a combination or agreement of two or more persons by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants accomplished what it is alleged they conspired to do, is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership for criminal purposes in which every partner becomes the agent of every other partner. However, to

establish a conspiracy, the Government is not required to show that two or more persons sat around a table and entered into a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth the details of the plans, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal document or specified oral agreement.

Your common sense will tell you that when men and women in fact undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. Conspirators do not usually reduce their agreements to writing or acknowledge them before a Notary Public, nor do they publicly broadcast their plans. From its very nature, a conspiracy is almost always characterized by secrecy, rendering detection difficult.

Thus, it is sufficient if two or more persons, in any manner, through any contrivance, impliedly or tacitly come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

It is not necessary for the Government to prove the success of the conspiracy in order to show a violation

of the statute. As a conspiracy is basically the agreement to violate the law, it may exist even though the final objectives were never accomplished.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. The adage, "Actions speak louder than words," is applicable here. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences flowing therefrom, show a conspiracy or agreement to secure a particular result as satisfactorily and inclusively as more direct proof.

If, upon such consideration of all the evidence, either direct or circumstantial, you find beyond a reasonable doubt that the minds of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of conspiracy is established.

One may become a member of a conspiracy without

full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of a conspiracy, does not thereby become a conspirator.

Before the jury may find that the defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encou ges, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant -- a conspirator.

One who willfully joins an existing conspiracy is

charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular defendant was a member of the conspiracy, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

I want to caution you that mere association with one or more of the conspirators does not make one a member of the conspiracy. Nor is knowledge without participation sufficient. What is necessary is that a defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

Once you have found a conspiracy to exist and a defendant to have knowingly participated in it, the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited

than that of the co-conspirators, he is equally culpable so long as he was in fact a conspirator. If you find a person to be a member of the conspiracy, that person is deemed to continue to be part of that conspiracy unless and until he takes some affirmative action to disavow or defeat the purposes of the conspiracy. Mere cessation of activity is not enough to show withdrawal from a conspiracy; there must be affirmative action, either in making a clean breast to the authorities or communication of the abandonment in a manner reasonably calculated to reach the other conspirators. The burden of establishing withdrawal lies with the defendant. If you find that a given defendant withdrew from the conspiracy prior to September 5, 1972, then you could not find that that defendant was a member of the conspiracy and as to that defendant you must return a verdict of not guilty.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts thereafter knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the

defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made, or see the act done.

Therefore, statements of any conspirator, which are not in furtherance of the conspiracy, or made before its existence, or after its termination, may be considered as evidence only against the person making them.

As I have said, the fourth element of a conspiracy offense is that one of the defendants or co-conspirators knowingly committed an overt act after September 5, 1972.

An "overt act" is any act knowingly committed by one of the defendants or co-conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, driving an automobile, using a telephone. It must, however, be an act which follows

and tends towards accomplishment of a plan or scheme, and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

The Government has alleged in the indictment certain overt acts which you may consider in this connection, and which I have read to you -- now, I am sorry there.

In any event, I will read count 11 to you.

Count 11 reads as follows:

(continued next page)

The allegations contained in paragraphs two through five of Count 1 of this indictment are incorporated herein.

2. In or about and between February, 1966 and December 1974, within the Eastern District of New York, Patrick J. Clifford, David J. Dowd and Frank B. Powell, the defendants, together with Joseph Stefan and Douglas Wulffleff, each named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, did knowingly, wilfully and unlawfully combine, conspire, confederate and agree to misapply in excess of one hundred dollars, which was entrusted to the custody and care of the Security National Bank, by agreeing upon, consenting to and helping to cause salary increases for certain bank officers, which salary increases, in whole or in part, were intended to reimburse said bank officers for unlawful political contributions and to reimburse said bank officers for any tax liability on the said salary increases, in violation of Title 18, United States Code, Section 656.

Now, what I have said with respect to the proof to establish a conspiracy charge in Count 1 applies equally to Count 11, except in this Count you must find

beyond a reasonable doubt that the defendants conspired to violate Section 656 Title 18, which reads as follows:

"Whoever, being an officer, director, agent or employee of, or connected in any capacity with any national bank...wilfully misapplies any of the monies, funds or credits of such bank or any monies, funds, assets or securities intrusted to the custody or care of such bank, or to the custody or care of any such agent, officer, director, employee or receiver shall be guilty of a crim ."

Four essential elements which must be established beyond a reasonable doubt to prove a violation of this Count are as follows:

One, that the accused was an officer, director, agent or employee of a bank;

Two, that the bank was a national bank. None of the parties dispute either of the first two elements.

Three. The third element is that the defendants conspired to wilfully misapply the money or funds of the bank.

I have already explained to you what a conspiracy is and the necessity for finding an overt act in

furtherance of the conspiracy. A 2851

The law requires that the conspiracy be two wilfully misapply bank funds or monies.

An act is "wilfully" done if done voluntarily and intentionally, and with specific intent to fail to do something the law requires to be done; that is to say, that with that purpose either to disobey or disregard the law.

In order to find that there has been a wilfull misapplication there must be a conversion to the use of someone else of the monies and funds of the bank, by the defendant. Conversion is any unauthorized act which deprives an owner of his property permanently or for an indefinite period of time.

Four. The fourth element is that the defendants must have intended to injure or defraud the bank.

As to this element you must again distinguish between motive and intent.

Motive is what prompts a person to act, or fails to act. Intent refers only to the state of mind with which the act is done. For instance, personal advancement and financial gain are two well recognized motives for much of human conduct. These laudable motives may prompt one person to voluntary acts of

good, another to voluntary acts of crime.

Good motive alone is never a defense where the act done is a crime. So, the motive of the accused is immaterial except insofar as evidence of motive may aid determination of state of mind or intent.

An intent to injure the bank, as contemplated by the statute, is not inconsistent with a desire for the ultimate success or welfare of the bank. It may, within the meaning of the law, result from an unlawful act, voluntarily done, the natural tendency of which may have been to injure the bank. A wrongful misapplication of bank funds, even if made in the hope or belief that the bank's welfare would ultimately be promoted, is nonetheless a violation of the statute, after the necessary effect is or may be to injure or defraud the bank.

If you find beyond a reasonable doubt that the defendants conspired to cause the Security National Bank to make contributions which violated Section 610, thereby subjecting the Security National Bank to criminal prosecution, then you may find that the bank has thereby been injured as that term is defined for the purpose of establishing a violation of Section 610. And, if the defendants were aware that such injury was

the natural consequence of this conspiracy, and they nevertheless conspired to cause the expenditure of bank funds to be made in violation of Section 610, then you may find them guilty of the charge alleged in Count 11.

However, if you are not convinced beyond a reasonable doubt as to any of these elements, you, of course, must acquit the defendants.

Counts 12 and 13 will now be read to you.

Count 12.

On or about February 19, 1971, within the Eastern District of New York, Patrick J. Clifford, the defendant, did knowingly and wilfully falsify a material fact in a matter within the jurisdiction of the Office of the Controller ofthe Currency, an agency of the United States to wit: that employees of the Security National Bank were not reimbursed by the bank for political contributions, Patrick J. Clifford, the defendant, knowing such statement to be false.

That's under Title 18, United States Code Section 1001.

And Count 13 reads:

On or about February 19, 1971, within the Eastern District of New York, Patrick J. Clifford, the defendant, did knowingly and wilfully falsify a

material fact in a matter within the jurisdiction of the Office of the Controller of Currency, an agency of the United States, to wit:

That postage stamps had not been used to make political contributions by the Security National Bank, Patrick J. Clifford, the defendant, knowing such statement to be false.

That is under Section 1001, Title 18.

Now, Section 1001 of Title 18 of the United States Code reads in pertinent part:

"Whoever, in any matter within the jurisdiction of an agency of the United States, knowingly and wilfully falsifies...a material fact" is guilty of an offense against the laws of the United States.

I might say at this time, if you recognize, when I read the indictment that there are words of the statute that are listed therein and which become the essential elements that I have been reading to you. I just want to pass that on to you at this time so that again you will be able to relate the elements to the counts.

Now, this crime has five elements which the Government has proved beyond a reasonable doubt.

First, that the statement charged in the

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indictment was actually made;

Second, that it was a false statement;

Third, that the false statement was made knowingly and wilfully;

Fourth, that the false statement be made in a matter within the jurisdiction of a department or agency of the United States;

And fifth, that the statement must be material to the inquiry made by the agency.

The Office of the Controller of the Currency is an "Agency of the United States"; and the statements alleged to have been made in the indictment are matters within the jurisdiction of the United States.

The making of a false statement to an agency of the United States is not an offense unless the statement made is a material statement. The issue of materiality, however, is not submitted to you for your decision but rather is a matter for the decision of the Court. You are instructed that the statements charged in the indictment are material statements.

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a

fact, such as an eye witness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

A defendant is presumed innocent of the crime. Thus, the defendant, although accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is based upon

reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You, the jury, will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden of duty of calling any witnesses or producing any evidence. If the jury views the evidence in the case as reasonably permitting either of the two conclusions, one of innocence, the other of guilt, you, the jury, must, of course, adopt the conclusion of innocence.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

You, the jury, may make common sense inferences from the proven facts.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence.

The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances

under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and his demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and as to whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and to the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

(Continued on next page)

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

When a defendant in a case of this kind takes the stand, which he has a perfect right to do, he is subjected to all the obligations of witnesses, and his testimony is to be treated like the testimony of any other witness; that is to say, it will for you to say, remembering the substance of his testimony, the manner in which he gave it, his cross-examination and everything else in the case, whether or not he told the truth. Then, again, it is for you to remember, you have a perfect right to do so, the very grave

interest the defendant has in the case. As he places himself as a witness, he stands like any other witness.

You are instructed that an accomplice in a crime is a competent witness against the perpetrators of the crime. An accomplice includes all persons connected with the offense by an unlawful act or omission either before, at the time of, or after the commission of the offense, whether such witness was present or participated in the crime or not.

However, his testimony implicating the defendant as perpetrator of a crime is inherently suspect for such a witness may well have an important personal stake in the outcome of the trial and you should scrutinize his testimony with great care. An accomplice so testifying may believe that the defendant's conviction will result in expected rewards that may have been either explicitly or implicitly promised to him in return for his testimony.

The mere fact that a witness may be an accomplice does not mean that he cannot tell the truth. It only means that you are to examine his testimony with care, and, if having done so, you believe it is the truth, then you are to give it the same credence as the testimony of other witnesses.

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Is that Count 12?

MR. BANNIGAN: Yes.

THE COURT: Let's see if that's Count 12.

Yes. The pages were stuck.

I think I should reread it. Evidently, two of my pages were stuck together, and it was pointed out that one page has not been read to you. I will go back.

And under Section 1,001 -- just to complete the charge on that part of Title 18 -- I read the statute to you and then I told you there were five elements which the Government must prove beyond a reasonable doubt. And the five elements, which I read, were that the statement charged in the indictment was actually made; that it was a false statement; but the false statement was made knowingly and wilfully; that the false statement be made in a matter within the jurisdiction of a department or agency of the United States; and that the statement must be material to the inquiry made by the agency.

The part that has not been read was in reference to that.

If the statement made was incomplete, misleading, evasive or unresponsive, it does not violate the section

so long as it was literally true. In order to violate the section, the statement must be untrue when made, and then known to be untrue by the person making it or causing it to be made.

That's in reference to Counts 12 and 13.

The word "false" must be considered together with the words "knowingly" and "wilfully."

An act is done "wilfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with that purpose either to disobey or to disregard the law. The word "knowingly" is added in order to insure that no one would be convicted who made a statement or representation which was false because of mistake or accident or other innocent reason.

If you find that the accused did not knowingly and wilfully make any false statements or cause any to be made, you must acquit the accused.

Whether or not the Government was actually deceived, or suffered monetary loss, because of the acts charged in the indictment, is immaterial.

And I did read to you the following part, that the office of the Controller of the Currency is an agency of the United States; and the statements alleged

to have been made in the indictment are matters within the jurisdiction of the United States.

Now, continuing:

The fact that a person is a banker, a politician, a lawyer or a public official does not create a presumption as to whether or not that person is telling the truth. All persons who testify, regardless of their status, are entitled to have their testimony weighed the same as any other person, both as to their truthfulness and credibility.

If you find any witness lied as to any material fact in the case -- or wilfully testified falsely -- then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness.

If you find, however, that you can sift through that testimony and determine which of the testimony is true and which was false, then the law allows you to take the portions which were true and weigh it and disregard those portions which were false. That again is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and

circumstances in evidence to determine which of the witnesses are worthy of greater credence.

You may find the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

The Government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe beyond a reasonable doubt that the witness is telling the truth.

Where a defendant has offered evidence of good general reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, the jury

should consider such evidence along with all the other evidence in the case.

Evidence that a defendant's reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, has not been discussed; or that those traits of the defendant's character have not been questioned, may be sufficient warrant and inference of good reputation as to those traits of character.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that which all reasonable persons treat any question, depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted, give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human

beings.

If an accused be proved guilty beyond a reasonable, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

In making the factual determination on which your verdict will be based, you may consider only the exhibits which have been admitted in evidence and the testimony of the witnesses as you have heard it in this courtroom.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

A separate crime or offense is charged against one or more of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. The fact that

you may find all or some of the accused guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against any of the defendants.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Now, in this type of case there must be a unanimous verdict. That means all 12 of you must agree, and it goes without saying, that it becomes incumbent upon you to listen to one another and to argue out the points among yourselves in order to determine in good conscience whether your fellow juror's argument is one commensurate with yours or whether you can with good conscience agree with him. You have no right to stubbornly and idly sit by and say, "I am not talking to anyone. I am not going to discuss it." Because people with common sense and the ability to reason must communicate their thoughts. So, anything which appears in the record and about which one of you may not agree -- talk it out among yourselves and then if you can't agree as to what is in the record, well, you can ask the Court to have that

portion of the testimony read back to you. You may do so by knocking on the door and giving a note in writing to the Marshal who will then present it to the Court, and I will then bring you into the courtroom for that purpose.

Now, that completes the Court's charge.

Now, in any event, I must advise you, as I have previously done so, that you will receive these photostatic sheets in the form of a verdict. But I charge you now that the form of your verdict as set forth in these sheets will be as follows:

If you should find the defendant or all defendants not guilty of any or all of the counts of which they have been charged, then you, Mr. Foreman of the jury, you can come into the courtroom and say, "We, the jury, find the defendants not guilty on all counts."

And that would encompass each and every defendant that is named in each count.

If you find the defendants guilty as to all counts in the indictment, of course, you would still make that sheet up and place in there the counts, guilty or not guilty.

If you should find guilty on all counts, then you would announce to the Court, "We, the jury, find

the defendants guilty on all counts as charged in the indictment."

That would then specify as to the counts that they are. And you will see that they are not named, as I said, in all counts. And I would request you submit this photostatic copy to the Court at the time you announce your verdict.

All right. That's completed by yourself and signed by yourself as Foreman.

Now, that will be the form of your verdict. And, of course, the form of your verdict could likewise be what we call a split form. You could find one, two, three, four of the defendants guilty of any one of the counts that they are charged with.

For instance, if you should find the defendants guilty of Count One, which is the conspiracy count, you still determine whether or not that defendant is part of that conspiracy. And then you may announce, "We find the defendant guilty of Count One."

And if you should omit one of those defendants, it's up to you to say, "We find defendant so and so, and so and so, and so and so guilty, and the other defendant not guilty."

Do you understand the form of your verdict?

If you have any problem with the form of the verdict, advise the Court prior to bringing in your verdict -- you may come in and request the Court to again delineate for you the forms of verdict. So that if you have any reason to believe that your form may not be proper, advise the Court and it will be straightened out at that time.

Is there any question at this time as to your form of verdict? Do you understand the Court?

THE FOREMAN: Yes.

(Continued on next page.)

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JB/ss

THE COURT: And you understand what you will do with this.

THE FOREMAN: Yes.

THE COURT: Then you will also have submitted to you in your jury room a list of the witnesses that have testified, which I have instructed I will do so, the names of the witnesses, the dates that they testified, and on behalf of whom they testified. So that you need not try to argue out among yourselves any recollection, whether it was on the defendant's side or on the prosecutor's side, because this has been a long case. And it is only being submitted for facilatory purposes. That is, to facilitate your ability to identify the witnesses with a particular phase of the case.

All right. That is in view of the fact that each person's testimony must be considered in reference to the particular phase or the defendant in the case in which they testified.

Now, once again, if you have any questions during your deliberations and you feel that it's absolutely necessary that you either come in and have testimony read back or any portion of the charge read back to you, that you feel you may not have received the full import on its first delivery to

you, you may request that of the Court.

You may also request of the Court the testimony of any witness that has testified.

And the Court will send to you the physical exhibits that have been placed in evidence after they have been marshalled between the Court and the attorneys. And that will be brought into you at the time when you are deliberating. So you will have at your hands practically everything that you heard in this Courtroom, with the exception of the Court's charge, and the minutes as they have been transcribed. Those will be delivered to you upon request. Not inside, but orally in the Courtroom.

Now, are there any questions? Anything you don't understand that I have talked about in the last part.

All right. Then for all intents and purposes, I am now going to ask the three alternates to step down and sit in the first seat of the Courtroom. And I'm going to ask now the marshals to come forward. They will be in constant company with you.

All right, will you swear in the marshals.

(Whereupon, three deputy marshals were sworn by the Clerk of the Court.)

A 2874 Charge

THE COURT: All right. Now, the marshals will take the prime jurors into the jury room and then the alternates will be permitted to go separate. But I suggest that if you do sit together there is -- no discussion of this case should take place. Do not discuss it from here to the restaurant that you are going to. Do not discuss it at the time that you are in the restaurant. And by no means, don't discuss it in the hotel where you are going to go. Your deliberations will start tomorrow morning as soon as the marshals bring you back to Court.

And the Court will be here, of course, for your assistance at any time during the day.

Keep an open mind once again and make sure that you follow the instructions of the Court in coming to your conclusions.

All right. I won't see you again tonight because they are going to take you right to the hotel. So good night and have a good night's sleep.

(Whereupon, the jury retired from the Courtroom.)

MR. BANNIGAN: Your Honor, what time tomorrow.

THE COURT: 10:30 or 11:00. Even 11:00 o'clock would be all right.

Thank you for showing me what happened.

MR. BANNIGAN: I figured it got stuck together.

THE COURT: And unfortunately it read right.

MR. NAFTALIS: I know. Everything followed.

MR. RYAN: The only observation was the advice of counsel. I thought it would have been referred to in -- when you discussed the conspiracy charge so that they know that the advice of counsel -- that it's applicable not only to the substantive violations, but the conspiracy.

THE COURT: I am certain that if they feel they want that read back, they will ask for it.

A All right.

(Whereupon, an adjournment was taken to Thursday, May 13, 1976 at 10:30 o'clock a.m.)

I Hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Joseph Ballella

Official Court Reporter
U. S. District Court

A 2876

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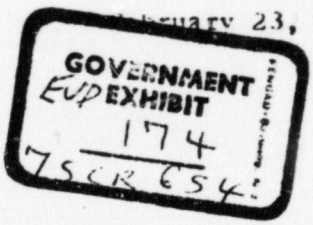
THE ADMINISTRATOR OF NATIONAL BANKS

Office of the
Comptroller of the Currency
NATIONAL BANK EXAMINER

February 23, 1971



Mr. C. M. Van Horn
Regional Administrator of National Banks
Second National Bank Region
33 Liberty Street, Room 520
New York, New York 10005

Re: Security National Bank
Huntington, New York

Dear Mr. Van Horn:

As per your instructions, I visited the above bank on February 19, 1971 to review the anonymous letter regarding political contributions with bank management. My copy of the letter is returned herein. The bank did not request a copy of the letter, nor was a copy left with them.

The matter was discussed with Chairman Patrick J. Clifford, Executive Vice President Frank B. Powell, and Senior Vice President David J. Dowd. The bank reviewed the letter, and the following information was developed:

The bank's practice is to request that officers with administrative responsibilities who make more than $20,000 per year, are requested on a voluntary basis to contribute approximately $100 per month from their own funds for political dinners. Mr. Clifford stated that in no way are these officers reimbursed by the bank. He stated that not all officers who were requested to make donations made them, and gave as an example President Travers, who attends many such political affairs, and refuses to give any money. Mr. Clifford stated that the bank's attorney, William Shea, has advised him that of all the ways banks directly or indirectly support political affairs, that the means used now is the least objectionable from a legal standpoint. Mr. Clifford stated that the practice of having a deposit account in the bank for the donated funds was discontinued last year. He further stated that at no time had contributions been in the form of stamps. Regarding the comments about Mr. Shea receiving funds, which the letter related to legal fees and the Royal National Bank proxy fight, Mr. Clifford stated this was entirely false. First of all, he stated that Mr. Shea's fee regarding the Royal merger was $25,000. He stated that this was very reasonable, and that Mr. Shea could have been entitled to $100,000 on the basis of time and effort spent. As regards the checks payable to Mr. Shea, Mr. Clifford stated that the officers had spent money early last year for political affairs, and that when election time came, the officers were unable to raise $15,000 needed for political dinners. Mr. Clifford said that Mr. Shea loaned $15,000 of his own money to cover these expenses. Mr. Dowd at this point produced a list of bank officers who had been requested to start repaying the loan to Mr. Shea. Some of the officers on the list contributed sums ranging from $140 to $300, while others

A 2877

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THE ADMINISTRATOR OF NATIONAL BANKS

Office of the
Comptroller of the Currency
NATIONAL BANK EXAMINER

Mr. C. M. Van Horn, continued.

gave no money at all. Mr. Dowd stated that these donations were part of the $100 per month arrangement, and not extra donations. The aggregate of these personal contributions totalled $5,000, which was repaid to Mr. Shea, leaving an open balance of $10,000. Mr. Clifford said that the balance would be repaid, even if he and Mr. Powell have to give $2,500 each out of their own funds.

Mr. Powell stated that he recognized the handwriting on the anonymous letter as that of an officer on Mr. Dowd's list of bank officers who had been requested to repay Mr. Shea. Mr. Clifford said that no action would be taken against the officer involved.

Sincerely,

Edwin K. Langdon, Jr.

Edwin K. Langdon, Jr.
Senior National Bank Examiner

A 2878

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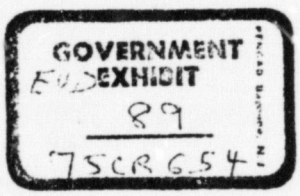

INDIVIDUAL ACCOUNTS 2

JOHN McNIERNEY

A 2879

	1	2	3	4	5	
Jan	Nassau County	Republican Committee				100 -
FEB	Island Park	Rep Comm				100 -
Mar	Commerce	Rep Club				100 -
Apr	Town of Oyster Bay	Rep Comm				100 -
May	Shelter Rock	Rep Club				100 -
JUNE	Lindenhurst	Rep. County Comm				75 -
JUNE	Lindenhurst	Rep County Comm			4/71 600	25 -
JUL						
AUG						
SEPT						
OCT	EXEMPT					
NOV	ILLNESS					
DEC	OR DEATH				12/71 600	
			1972			
JAN	N.Y. Rep STATE	Comm				100
FEB	" " "	"				100
MAR	Nassau	Rep Comm	1/4	Suff Rep		100
APR	"	"	"	"		100
MAY	NASSAU L. I. JOURNAL					100
JUNE	Nassau	Rep Comm				100
JUL	Suff Co Rep					100
AUG	Nass Co Rep	Comm				100
SEPT	Suff Co Rep	Comm				100
OCT	Brookhaven	Town Rep Com				100

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- :

75-CR-654

PATRICK J. CLIFFORD, DAVID J. DOWD, FRANK POWELL and THE SECURITY NATIONAL BANK. :

Defendants. :

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United States Courthouse
Brooklyn, New York

March 3, 1976
10:00 o'clock A.M.

B e f o r e:

HONORABLE MARK A. COSTANTINO, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Perry Auerbach
Official Court Reporter
U. S. District Court

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

THE COURT: The defendant Security National Bank has offered to plead Nolo Contendre to the counts of the indictment in which they are charged with violating criminal statutes.

The Government is opposed to the Court's acceptance of the plea.

This Court has given due consideration to the views of the parties and the interest of the public in the effective administration of justice.

The Court comes to the following conclusions with respect to this crime. There are two ways in which the law seeks to deter corporations and corporate directors from improper conduct.

The first way is through criminal statutes such as the ones where violations are charged in this case.

The second is by providing that corporate directors may be held personally liable in a civil action in the event shareholders are able to successfully prove actionable misconduct. Whether there is a Nolo plea as opposed to a plea or verdict of guilty, will be of significance in a civil action currently pending.

By accepting a plea of Nolo Contendre, the

Court would weaken the civil deterrent against corporate misconduct.

In view of this and the seriousness of the charge here, it would be contrary to the interest of the public in the effective administration of justice to accept the Nolo plea offered by Security National Bank.

Accordingly, the plea will not be accepted.

In reference to count 15 the Government has indicated that it has no direct proof of pre-election agreement to contribute to Mayor Beame's campaign.

The Court must therefore decide whether this lack of proof requires dismissal of count 15.

It is concluded a dismissal would be improper. It is conceivable that a jury might infer from the fact of the contribution itself and from the surrounding circumstances that the requisite specific intent was present.

Accordingly, the motion is denied.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against - 75 CR 654

PATRICK J. CLIFFORD, DAVID J. DOWD, FRANK D. POWELL and THE SECURITY NATIONAL BANK,

Defendants.

- X

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO VARIOUS SUBSTANTIVE AND PROCEDURAL MOTIONS FILED BY THE DEFENDANTS.

DAVID G. TRAGER
United States Attorney
Eastern District of New York

EDWARD R. KORMAN
Chief Assistant United States Attorney

ROBERT F. KATZBERG
Assistant United States Attorney
(Of Counsel)

in response to the various substantive and procedural motions filed by the defendants Patrick J. Clifford, David J. Dowd and Frank B. Powell. The indictment against these three individuals, and the Security National Bank, which contains twenty-two counts, arises out of a conspiracy to cause the Security National Bank to make in excess of $200,000.00 in illegal campaign contributions from 1966-1974.

Almost all of these contributions were made by bank officers who were, in turn, reimbursed with funds of the Security National Bank. Specifically, the defendants are charged as follows:

1. Count One of the indictment charges the three

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

- against - Cr. No. 75 CR 654

PATRICK J. CLIFFORD, DAVID J. DOWD, FRANK B. POWELL and THE SECURITY NATIONAL BANK,

Defendants.

- X

PRELIMINARY STATEMENT

This memorandum is submitted by the United States

4, 6, 8, 10, 12, 14, 16, 18); the defendant Clifford is also named as a defendant in nine of those eighteen counts (Counts 3, 5, 7, 9, 11, 13, 15, 17 and 19); the defendant Dowd is named as a co-defendant in two of those counts (17 and 19) and the defendant Powell is named as a co-defendant in five of those counts (3, 5, 9, 17, 19).

3. Count 20 of the indictment charges the three individual defendants with conspiracy to misapply wrongfully the funds of the Security National Bank in violation of Title 18, U.S.C., §656.

4. Counts 21 and 22 charged the defendant Clifford with making false statements in a matter within the jurisdiction of the Comptroller of the Currency.

individual defendants, and other co-conspirators not named as defendants, with conspiring to cause the Security National Bank to make political contributions in violation of Title 18, U.S.C. §610, which makes it unlawful for "any national bank *** to make a contribution or expenditure in connection with any election to any political office."

2. Counts Two to Nineteen of the indictment set out various substantive violations of Section 610 by the individual defendants and Security National Bank. The Security National Bank is charged separately in nine of those eighteen counts with making illegal campaign contributions (Counts 2,

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THE MOTIONS TO DISMISS VARIOUS COUNTS OF THE INDICTMENT

The individual defendants have filed motions to dismiss various substantive counts of the indictment. The principal motion, discussed extensively in the legal memorandum submitted by the defendant Clifford, and to a lesser extent by the defendant Dowd, is to dismiss the substantive counts which charge the individual defendants with causing illegal contributions to be made to various candidates for state office. The defendants argue that Section 610 prohibits only contributions in connection with federal elective office. A related argument by the defendant Dowd is that Counts 16 and 19 must be dismissed because the election to which monies were contributed was for a judicial office; a judicial office, he argues, is not a "political office" within the meaning of Section 610. Both these claims, if accepted, would inure to the benefit of all the defendants.

There are, in addition, substantive motions which apply only to the defendants who are filing the motions. The defendant Clifford argues that Count 15, in which only he is named as a defendant, should be dismissed because the contribution there at issue, which was used to pay off campaign debts, was made after the election. According to the defendant Clifford, it is therefore not within the pro-

hibition of Section 610. The defendant Clifford also alleges that Counts Twenty-One and Twenty-Two must be dismissed, even if he did make the false statements there charged, because the evidence disclosed by pretrial discovery allegedly shows that Section 1001 is inapplicable. Finally the defendant Clifford also claims that he was deprived of a fair trial by unnecessary delay in the filing of the indictment.

The last motion to dismiss, which is made by the defendant Powell, is based on the claim that the evidence disclosed by pre-trial discovery is inadequate to sustain a conviction on the five substantive counts in which he is named as a defendant. Accordingly he argues, a dismissal is warranted prior to trial.

We submit that all of these claims are without merit and that the motions should be denied. We proceed now to a detailed response to them.

A. Section 610 Plainly Bars Contributions By National Banks In Connection With Any Election To Any Political Office

Section 610, to the extent relevant to this argument, provides:

> It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with primary election or political convention or caucus held to select candidates for

> any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.
>
> * * *
>
> As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section*** [emphasis added].

The defendants argue that "[t]he statutory framework, the legislation, relevant judicial decisions and public policy considerations all make plain that the prohibitions of §610 only apply to federal elections" (Clifford, Memo. p. 2). This claim is without substance.

Section 610 could not be any more explicit; it flatly bars political contributions by a national bank in connection "any election to any political office". Indeed,

where Congress intended to bar contributions only in connection with elections for federal office, is so stated explicitly. Thus in the clause which follows the limitation on contributions by national banks and other congressionally chartered corporations, Section 610 explicitly bars contributions by other corporations only with respect to elections for specified federal offices. The reason for this distinction is obvious. Congress exercises plenary regulatory powers over the corporations it charters. Accordingly, it has the same power to bar all contributions by those corporations as a state legislature has with respect to state chartered corporations. On the other hand, Congress has no power to bar state chartered corporations from making contributions in connection with elections for state office; it must rely on its power to regulate elections for federal office. Here lies the basis for the distinction drawn by Section 610.

Morecver, the legislative history of Section 610 shows that Congress intended to accomplish the result which its language plainly suggests. Although the defendant Clifford's "research has not disclosed any indication in the legislative history that Congress intended to prohibit national banks, corporations and trade unions from contributing to local elections" (Clifford Memo. p. 7), our research has disclosed conclusive evidence of such an intent

by Congress with respect to national banks and congressionally chartered corporations.

The relevant language in the present Section 610 was enacted into law in 1907 (34 Stat. 864). The Senate Report, recommending the adoption of the statute, reads as follows (S. Rep. No. 3056, 59 Cong., 1st Sess, p. 2):

> The evils of the use of money in connection with political elections are so generally recognized that the committee deem it unnecessary to make any argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to promote purity in the selection of public officials.
>
> The bill as amended, aside from the penalties imposed, consist of two general purposes, the first of which is the following:
>
> > "That it shall be unlawful for any bank or any corporation organized by authority of any laws of congress to make a money contribution in connection with any election to any political office."
>
> This proposition deals only with corporations organized under the laws of the United States. It has no reference to and does not affect in any way corporations under the laws of the different States.
>
> The effect of this provision is to make it unlawful for any corporation, no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The congress has the undoubted right thus to restrict and regulate corporations of its own creation.
>
> The second proposition of the bill is as follows:
>
> > "It shall also be unlawful for any corporation whatever to make

> a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a representative in congress is to be voted for or any election by any State legislature of a United States Senator."

It will be observed that this proposition is unlike the first, which applied only to corporations created under the laws of congress, applies to all corporations, no matter under what laws created; but that while the first proposition prohibits Federal corporation from contributing to any election, the second proposition prohibits only contributions in connection with Federal elections, those of Presidential and Vice-Presidential electors, representatives in congress, and elections by States legislatures of the United States senators [Emphasis supplied]. _/

Similarly, the House Report, recommending the adoption of the same statute, distinguishes between the all inclusive restriction on political contributions by national banks, and other congressionally chartered corporations, and the less restrictive ban on contributions by other corporations _/ (H. Rep. No. 6397, 59th Cong., 2d Sess., p. 1).

The same distinction was also discussed during the floor debate on the bill. 41 Cong. Rec. 59th Cong., 2d Sess. pp. 1451-1453. So, for example, in response to a question

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_/ We are annexing hereto, as Appendix A, zerox copies of the various documents, including excerpts from the Congressional record, which we are relying in this part of our memorandum.

_/ In 1943 labor unions were brought within the ambit of this prohibition. See United States v. UAW-CIO, 352 U.S. 568, 576 (1957).

suggesting that Congress was without power to ban corporations from making contributions with respect to any election, Representative Hardwick observed (id. at 1453):

> "Now, Mr. Speaker, the gentleman says that this bill under discussion is of doubtful constitutionality because it proposes to prohibit any corporation or corporations from making contributions in any election. Now, the bill does not propose that, but it does propose what it can rightfully propose, and that is, that any corporation chartered under an act of Congress shall not be allowed to make contributions to political campaigns. We can regulate the terms under which corporations of that character can live and move and have their being. We might only have the right to regulate corporations along certain lines if they are not national corporations, but when they are chartered under national laws we have the right to regulate the way in which they shall exercise the charter power granted to them by this Government."

In short, there cannot be the slightest doubt that Congress intended, in the words of Senate Report No. 3056, supra, to make it unlawful or any corporation chartered by Congress to make a contribution in connection with any election to any political office "without regard to whether the election be national, state, county, township, or municipal."

There is thus no ambiguity in the language of Section 610 or its history. Moreover, the cases cited by the defendant Clifford which suggest that Section 610 is in

some respects ambiguous (Clifford Memo. p. 2-3) involve the issue of what activities constitute a contribution or expenditure in connection with an election./ No case has ever suggested that language proscribing contributions by national banks in connection with "any election to any political office" is ambiguous.

Nor, contrary to defendant's claims, do the definitional clauses of Section 591(e) and 591(f) undermine the clear language of Section 610. While it is true that Section 591, prior to its most recent amendment (P.L. 93-443, Section 101(f)(2)), provided that when used in various sections of Title 18, including Section 610, the terms ~~"contribution" and "expenditure"~~ means various activities undertaken for the purpose of influencing "the election, or elections of any person to Federal office ***", that is not the exclusive

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/ See, e.g., United States v. CIO, 335 U.S. 106 (1948), statute held not to prohibit union from endorsing candidate in its regularly published newletter; Pipefitters v. United States, 407 U.S. 385 (1972), statute held not to prohibit union from making political expenditure if the monies have been volunteered by its members; United States v. UAW-CIO, 352 U.S. 567 (1957), statute held to prohibit us of union dues to sponsor commercial television broadcasts endorsing political candidates. Moreover, the conclusions the Senate Special Committee which are summarized in the latter opinion 352 U.S. 579-580, and quoted at pages 6-7 of the defendant Clifford's Memorandum, merely observes, quite correctly and quite irrelevantly, that Section 610 does not bar contributions by a labor union to state or local elections. Regrettably, Mr. Clifford was the President of the Security National Bank and not a labor union.

definition of those terms in Title 18, for the same legislation that added these definitions (Pub. Law 92-225), also added the following clause to Section 610:

> "As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift or money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable ordinary course of business) to any candidate, campaign committee, or political party of organization, in connection with any election to any of the offices referred to in this section" [emphasis supplied].

Thus, the definition of the phrase "contribution or expenditure" contained in Section 610 is also deemed to "include" specified activities "in connection with any election to any of the offices referred to in this section." As we have shown "this section", Section 610, precludes contributions by national banks in connection "any election to any political office." Moreover, any doubt that Congress had no intention of altering the scope of the ban on political contributions by national banks is eliminated by the Conference Committee Report explaining why the additional defitional section was added to Section 610. The relevant excerpt reads as follows (117 Cong. Rec., 92 Cong, 1st Sess., 46799):

Amendment to Section 610 of Title 18, United States Code

Senate bill.--No comparable provision.
House amendment.--Section 305 of the House amendment amended section 610 of title 18 of the United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations to add a new paragraph defining the phrase "contribution or expenditure" to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in such section. In the case of a contribution or expenditure by a national bank, or by a corporation organized by authority of any law of Congress, Section 610 refers to "any political office". In the case of a contribution or expenditure by any corporation whatever, or by any labor organization, Section 610 refers to the offices of presidential and vice presidential electors; Senator; and Representative in, or Delegate or Resident Commissioner to the Congress

* * *

Conference substitute.--The conference substitute is identical with the House amendment except that the phrase "contribution or expenditure" does not include a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business. [Emphasis added].

It is thus plain that the very Congress which added the definitional clauses to Section 591(e) and (f), and to Section 610, recognized that the latter section preserved the distinction between national banks and other congressionally chartered corporations, on the one hand, and other

corporations and labor unions, on the other hand.[1]

We conclude our discussion of this issue, where the defendant Clifford began his. He reminded us at the outset that "in defining the reach of a criminal statute, two principles must be kept in mind: (1) that penal statutes must be strictly construed **** and (2) that ... 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity'" (Clifford Memo. p. 2). The Supreme Court has, however, recently cautioned that "although penal laws are to be construed strictly, they 'ought not be construed so strictly ... to defeat the obvious intention of the legislature.'" Huddleston v. United States, 415 U.S. 814, 831 (1974); Barrett v. United States, ____ U.S.____ (1976).

The construction of Section 610 urged by the defendants here would plainly defeat the obvious intention of Congress. It should be rejected.

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[1] Ash v. Cort, 496 F.2d 416, 424-425 (C.A. 3, 1974), reversed U.S. ___, 95 S.Ct. 2080 (1975), cited by defendant Clifford (Br. p. 5), again did involve the issues raised here. Not surprisingly, the court of appeals was apparently not apprised of the pertinent legislative history quoted above. Moreover, we note that Congress itself has apparently rejected the interpretation placed on Section 591 and 610 in Ash v. Cort, supra; for, it amended the introductory sentence to Section 591 to make its definitional terms applicable "[e]xcept as otherwise specifically provided." (P.L. 93-443, Section 101(f)(3)).

B. Section 610 Bars Constributions By National Banks To Any Election Including Those For Judicial Office

The defendant Dowd moves to dismiss Counts 17 and 19 which involve contributions to elections for judges of the New York Court of Appeals on the ground that such an election is not one for a "political office". This frivolous claim warrants only brief comment. In enacting Section 610 Congress expressed its concern with the "evils of the use of money in connection with political elections". It enacted the broad prohibitions of Section 610 "in the interest of good government and *** to promote purity in the selection of public officials (S. Rep. No. 3056, Supra, p. 2)." Quite plainly that concern is present, if not more so, in elections for judicial office. See Rosenthal v. Harwood, 35 N.Y2d 467, 474 (1974). And, it is not surprising that the only opinion construing New York State's equivalent of Section 610 has rejected the defendant's argument with the apt comment that "[a] judicial office requires the protection from improper influence sought to be afforded by that section at least as much as any executive or legislative office." Pecora v. Queens County Bar Association, 46 Misc. 2d 530, 536 (S.Ct. 1965).

C. Section 610 Bars Post-Election Contributions By National Banks To Pay Costs Incurred By A Candidate For Political Office

Count 15 of the indictment charges that the defendant Clifford "did knowingly and wilfully consent to and cause contributions and expenditures to be made by the Security National Bank in connection with the 1973 New York Mayoralty election, to wit: contributions in violation of Title 18, United States Code, Sections 610 and 2, to the Beame Birthday Committee." The defendant Clifford alleges that his contribution was made in February or March, 1974, and, therefore, does not violate Section 610 because it was made subsequent to the election. He thus argues: "This deficiency is fatal because the contribution must be made for the purpose of active electioneering, i.e. to influence the public-at-large to vote for a particular candidate or party. It is, of course, impossible to influence the public at large when the contribution is made after the election has taken place" (Clifford Memo. p. 2). This claim is likewise frivolous, and is supported by little more than a string of quotations from opinions which do not address themselves to this particular issue.

There is no dispute, nor can there be, that the monies contributed to the Beame Birthday Committee were used to pay debts incurred in the 1973 mayoralty election campaign.

The invitation to "Mayor Beame's Birthday Party" (App. B, infra, 2), the medium through which the funds were raised, which was received by the Security National Bank, and which we have obtained from its files, specifically advised potential contributors that: "The proceeds will be used to dispose of recent campaign deficits." Moreover, the card to be returned with the contribution (App. B, infra, p. 3) expressly required the following acknowledgment: "I understand that the law prohibits your accepting monies from Corporations, City Officials or City Employees." (The law referred to is presumably Section 460 of the New York Election Law, which the defendant Clifford acknowledges "was intened to be the state counterpart of 18 U.S.C. §610. Schwartz v. Romnes, 495 F.2d 844, 852 (2d Cir. 1974)." [Clifford Memo, p. 8]).

The claim that a post-election contribution to be used to pay the costs of election is not a violation of Section 610 simply cannot be reconciled either with the purpose of Section 610 or its clear language. To repeat again, Congress enacted Section 610 because of its concern with "the evils of the use of money in connection with political elections" (S. Rep. No. 3056, supra, p. 2) and it enacted the broad prohibitions of Section 610 "in the interest of good government and *** to promote purity in the selection of public officials." It is simply irrelevant, in terms of the purpose of the statute, whether the contribution is made before or after the election,

for "the evil" is "the use of money [by national banks] in connection with political election." Moreover, the language of Section 610 lends no support to a construction which would create a loophole so wide that it would consume the entire statute. Quite plainly the contribution here - to pay campaign debts previously incurred - is a contribution "in connection" with an election to a political office.

We need not burden the memorandum with a discussion of the vaious cases cited by appellant. Suffice it to say that not one of them involved the issue raised here. Moreover, as we have already shown, the definitions in Section 591, which proscribes contributions made "for the purpose of influencing the nomination for election or elections, of any person to Federal office", does not override the supplemental definition contained in the last paragraph of Section 610. Nor is there any indication that in adopting the definitions contained Section 591(e) and 591(f), Congress intended to emasculate the statute by authorizing the loophole argued for here. On the contrary it was intended that these definitions be "as broad as possible." See remarks of Sen. Cannon, 117 Cong. Rec., 91st Cong. 1st, p. 28797.

APPENDIX B

Beame Birthday Party Invitation

A 2902

Bess Myerson and John L. Loeb
request the pleasure of your company
at a
Supper Dance
to celebrate the birthday of
Mayor Abraham D. Beame
aboard the
R.M.S. Queen Elizabeth 2
Pier Eighty-four, West Forty-fourth Street
New York City
Thursday evening, the twenty-first of March
Nineteen hundred and seventy-four
from seven until ten o'clock
Black Tie
Two hundred fifty dollars per person

(1)

A 2903

The proceeds will be used
to dispose of recent campaign deficits.

(2)

A-2904

I am happy to attend
"Mayor" Beame's Birthday Party" aboard the 2E21
Enclosed is my check for $____ for____ tickets
at $250.00 each.

I cannot attend but enclose my contribution of $____.

Name_____

Address_____

_____

Telephone_____

Occupation_____

I have made my check payable to
"Beame Birthday Committee"

(I understand that the law prohibits your accepting monies
from Corporations, City Officials, or City Employees.)

(2)

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